No. 17-432

IN THE

Supreme Court of the United States

CHINA AGRITECH, INC.,
Petitioner,
v.
MICHAEL RESH, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

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APPENDIX A

Relevant District Court Docket Entries

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Relevant Docket Entries

Resh v. China Agritech, Inc.,
Case No. 2:14-cv-05083-RGK-PJW

Date Filed	#	Docket Text
06/30/2014	1	COMPLAINT Receipt No: 0973-14047134 - Fee: $400, filed by plaintiff MICHAEL H. RESH. (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Attorney Betsy C Manifold added to party MICHAEL H. RESH(pty:pla))(Manifold, Betsy) (Entered: 06/30/2014)
06/30/2014	2	Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening) 1 filed by plaintiff MICHAEL H. RESH. (Manifold, Betsy) (Entered: 06/30/2014)
06/30/2014	3	NOTICE of Related Case(s) filed by plaintiff MICHAEL H. RESH. *and Notice of Pendency of Other Actions or Pro-*

Date Filed	#	Docket Text
		ceedings Related Case(s): 11-1331, 13-3008 (Manifold, Betsy) (Entered: 06/30/2014)
06/30/2014	4	CIVIL COVER SHEET filed by Plaintiff MICHAEL H. RESH. (Manifold, Betsy) (Entered: 06/30/2014)
07/01/2014	5	NOTICE OF ASSIGNMENT to District Judge Audrey B. Collins and Magistrate Judge Ralph Zarefsky. (ghap) (Entered: 07/01/2014)
07/01/2014	6	NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM filed. (ghap) (Entered: 07/01/2014)
07/01/2014	7	NOTICE OF DEFICIENCIES in Attorney Case Opening RE: Complaint (Attorney Civil Case Opening) 1. The following error(s) was found: No Notice of Interested Parties has been filed. A Notice of Interested Parties must be filed with every partys first appearance. See Local Rule 7.1-1. Counsel must file a Notice of Interested Parties immediately. Failure to do so may be addressed by judicial action,

Date Filed	#	Docket Text
		including sanctions. See Local Rule 83-7. (ghap) (Entered: 07/01/2014)
07/01/2014	8	NOTICE OF DEFICIENCIES in Request to Issue Summons RE: Summons Request 2. The following error(s) was found: The caption of the summons must match the caption of the complaint verbatim. If the caption is too large to fit in the space provided, enter the name of the first party and then write see attached.Next, attach a face page of the complaint or a second page addendum to the Summons. The summons cannot be issued until this defect has been corrected. Please correct the defect and re-file your request. (ghap) (Entered: 07/01/2014)
07/01/2014	9	NOTICE OF FILING FEE DUE on Pro Hac Vice Application mailed to attorney Bruce G Murphy for Plaintiff Michael H. Resh. Pro Hac Vice application has not been received by the court. Please return your completed Appli-

Date Filed	#	Docket Text
		cation of Non-Resident Attorney to Appear in a Specific Case, form G-64, or a copy of the Notice of Electronic Filing of your application and the $325.00 fee and this notice immediately. Out-of-state federal government attorneys who are not employed by the U.S. Department of Justice are required to file a Pro Hac Vice application;no filing fee is required. You have been removed as counsel of record from this case for failure to submit this filing fee. (ghap) (Entered: 07/01/2014)
07/01/2014	10	NOTICE of Interested Parties filed by plaintiff Michael H. Resh, (Manifold, Betsy) (Entered: 07/01/2014)
07/01/2014	11	Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening) 1 filed by plaintiff Michael H. Resh. (Manifold, Betsy) (Entered: 07/01/2014)
07/03/2014	12	CIVIL CASE MANAGEMENT ORDER upon filing of the complaint by Judge Audrey B. Collins. (cb) (En-

Date Filed	#	Docket Text
		tered: 07/03/2014)
07/07/2014	13	21 DAY Summons Issued re Complaint 1 as to Defendants Gene Michael Bennett, Yu Chang, China Agritech, Inc., Lun Zhang Dai, Does, Charles Law, Yau-Sing Tang, Xiao Rong Teng, Zheng Wang, Hai Lin Zhang, Ming Fang Zhu. (bm) (Entered: 07/07/2014)
07/16/2014	14	NOTICE TO ALL PARTIES AND ORDER. This matter has been transferred to the calendar of the Honorable R. Gary Klausner, United States District Judge. The parties are hereby notified that the reference to the ADR Program is VACATED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (sw) TEXT ONLY ENTRY (Entered: 07/16/2014)
07/16/2014	15	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 14-03-Related Case-filed. Related Case No: CV 11-01331 RGK(PJWx). Case transferred from Judge Audrey B. Collins and Magis-

Date Filed	#	Docket Text
		trate Judge Ralph Zarefsky to Judge R. Gary Klausner and Magistrate Judge Patrick J. Walsh for all further proceedings. The case number will now reflect the initials of the transferee Judge CV 14-05083 RGK(PJWx). Signed by Judge R. Gary Klausner (rn) (Entered: 07/16/2014)
07/22/2014	16	STANDING ORDER REGARDING NEWLY ASSIGNED CASES by Judge R. Gary Klausner. (sw) (Entered: 07/22/2014)
07/28/2014	17	PROOF OF SERVICE Executed by Plaintiff Michael H. Resh, upon Defendant Charles Law served on 7/17/2014, answer due 8/7/2014. Service of the Summons and Complaint were executed upon Charles Law, Individual in compliance with Federal Rules of Civil Procedure by personal service. Original Summons NOT returned. (Manifold, Betsy) (Entered: 07/28/2014)
07/30/2014	18	PROOF OF SERVICE Executed by Plaintiff Michael H.

Date Filed	#	Docket Text
		Resh, upon Defendant China Agritech, Inc. served on 7/18/2014, answer due 8/8/2014. Service of the Summons and Complaint were executed upon SUE RHEA, MANAGING AGENT FOR SERVICE OF PROCESS FOR CHINA AGRITECH, INC. in compliance with Federal Rules of Civil Procedure by service on a domestic corporation, unincorporated association, or public entity. Original Summons NOT returned. (Manifold, Betsy) (Entered: 07/30/2014)
08/05/2014	19	Joint STIPULATION Extending Time to Answer the complaint as to China Agritech, Inc. answer now due 9/5/2014, re Complaint (Attorney Civil Case Opening) 1 filed by defendant China Agritech, Inc..(Attorney Seth A Aronson added to party China Agritech, Inc.(pty:dft))(Aronson, Seth) (Entered: 08/05/2014)
08/05/2014	20	CORPORATE DISCLOSURE

Date Filed	#	Docket Text
		STATEMENT filed by Defendant China Agritech, Inc. (Aronson, Seth) (Entered: 08/05/2014)
08/05/2014	21	NOTICE of Interested Parties filed by defendant China Agritech, Inc., identifying Federal Insurance Company, Antares, XL Insurance Company Ltd., China PingAn Insurance (Hong Kong) Co., Ltd., PICC Property and Casualty Company Limited, Zurich Insurance Company, and Liberty International Underwriters. (Aronson, Seth) (Entered: 08/05/2014)
09/03/2014	22	NOTICE OF MOTION AND MOTION for Order for Appointment as Lead Plaintiff and Approval of Selection of Counsel; *Memorandum of Points and Authorities In Support Thereof* filed by movant CAGC Investor Group. Motion set for hearing on 10/6/2014 at 09:30 AM before Judge R. Gary Klausner. (Attachments: # 1 Proposed Order)(Attorney Betsy C Manifold added to party CAGC In-

Date Filed	#	Docket Text
		vestor Group(pty:bkmov)) (Manifold, Betsy) (Entered: 09/03/2014)
09/03/2014	23	DECLARATION of Betsy C. Manifold in support of MOTION for Order for Appointment as Lead Plaintiff and Approval of Selection of Counsel *; Memorandum of Points and Authorities In Support Thereof* 22 filed by Movant CAGC Investor Group. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Manifold, Betsy) (Entered: 09/03/2014)
09/04/2014	24	First AMENDED COMPLAINT against Defendants All Defendants amending Complaint (Attorney Civil Case Opening) 1, filed by PLAINTIFF Michael H. Resh (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Manifold, Betsy) (Entered: 09/04/2014)
09/04/2014	25	NOTICE OF INTERESTED PARTIES filed by PLAINTIFF CAGC Investor Group. (Manifold, Betsy) (Entered:

Date Filed	#	Docket Text
		09/04/2014)
09/22/2014	26	*Certification and* NOTICE of Interested Parties filed by Defendant Charles Law, identifying Michael H. Resh, William Schoenke, Heroca Holding BV, Ninella Beheer BV, China Agritech, Inc.. (Attorney Cary J Economou added to party Charles Law(pty:dft))(Economou, Cary) (Entered: 09/22/2014)
09/22/2014	27	NOTICE OF MOTION AND MOTION to Dismiss Defendant Charles Law filed by Defendant Charles Law. Motion set for hearing on 11/10/2014 at 09:00 AM before Judge R. Gary Klausner. (Attachments: # 1 Memorandum of Points and Authorities In Support of Motion to Dismiss, # 2 Declaration of M. Taylor Florence In Support of Motion to Dismiss, # 3 Exhibit A to the Declaration of M. Taylor Florence In Support of Motion to Dismiss, # 4 Exhibit B to the Declaration of M. Taylor Florence In Support of Motion to Dismiss, # 5 Exhib-

Date Filed	#	Docket Text
		it C to the Declaration of M. Taylor Florence In Support of Motion to Dismiss, # 6 Request for Judicial Notice In Support of Motion to Dismiss) (Economou, Cary) (Entered: 09/22/2014)
09/22/2014	28	NOTICE OF MOTION AND MOTION to Dismiss The Resh Plaintiffs' Putative Class Action or, In the Alternative, Class Allegations As Barred By Statute of Limitations filed by Defendant China Agritech, Inc.. Motion set for hearing on 11/10/2014 at 09:00 AM before Judge R. Gary Klausner. (Attachments: # 1 Memorandum of Points and Authorities, # 2 Declaration of Seth Aronson in support, # 3 Exhibit 1-14 of Aronson Declaration, # 4 Exhibit 15-28 of Aronson Declaration, # 5 Proposed Order)(Aronson, Seth) (Entered: 09/22/2014)
09/22/2014	29	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss The Resh Plaintiffs' Putative Class Action or, In

Date Filed	#	Docket Text
		the Alternative, Class Allegations As Barred By Statute of Limitations 28 filed by Defendant China Agritech, Inc.. (Aronson, Seth) (Entered: 09/22/2014)
09/23/2014	30	SCHEDULING NOTICE TO ALL PARTIES AND ORDER by Judge R. Gary Klausner. The Motion to Dismiss The Resh Plaintiffs' Putative Class Action or, In the Alternative, Class Allegations As Barred By Statute of Limitations 28, and Motion to Dismiss Defendant Charles Law 27, previously scheduled for 11/10/2014 at 9:00 am have been ADVANCED to 10/27/2014 at 9:00 am. IT IS SO ORDERED.THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (sw) TEXT ONLY ENTRY (Entered: 09/23/2014)
09/24/2014	31	STIPULATION for Order TO EXTEND BRIEFING SCHEDULE DUE TO RELIGIOUS HOLIDAYS filed by Defendant China Agritech, Inc.. (Attachments: # 1 Pro-

Date Filed	#	Docket Text
		posed Order)(Aronson, Seth) (Entered: 09/24/2014)
09/25/2014	32	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: MOTION to Dismiss Defendant Charles Law 27. The following error(s) was found: Proposed Document was not submitted as a separate attachment. In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. You need not take any action in response to this notice unless and until the court directs you to do so. (shb) (Entered: 09/25/2014)
09/25/2014	33	ORDER TO EXTEND BRIEFING SCHEDULE DUE TO RELIGIOUS HOLIDAYS by Judge R. Gary Klausner. To alleviate the hardship this schedule creates for the Parties and their counsel, this Court will extend the hearing date for Defendants' Motions to Dismiss

Date Filed	#	Docket Text
		until November 3, 2014. Plaintiffs shall file their Oppositions on October 6, 2014, and Defendants shall file their Replies on October 20, 2014. 31 (pso) (Entered: 09/25/2014)
10/01/2014	34	SCHEDULING NOTICE TO ALL PARTIES AND ORDER by Judge R. Gary Klausner. Movant CAGC Investor Group's Motion for Order for Appointment as Lead Plaintiff and Approval of Selection of Counsel 22, noticed for hearing on October 6, 2014, has been taken under submission and off the motion calendar. No appearances by counsel are necessary. The Court will issue a ruling after full consideration of properly submitted pleadings. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (sw) TEXT ONLY ENTRY (Entered: 10/01/2014)
10/06/2014	35	MEMORANDUM in Opposition to MOTION to Dismiss The Resh Plaintiffs' Putative

Date Filed	#	Docket Text
		Class Action or, In the Alternative, Class Allegations As Barred By Statute of Limitations 28 filed by Plaintiff Michael H. Resh. (Attachments: # 1 Proposed Order)(Manifold, Betsy) (Entered: 10/06/2014)
10/06/2014	36	MEMORANDUM in Opposition to MOTION to Dismiss Defendant Charles Law 27 filed by Plaintiff Michael H. Resh. (Attachments: # 1 Proposed Order) (Manifold, Betsy) (Entered: 10/06/2014)
10/17/2014	37	DENIED without prejudice to be determined at time of certification by Judge R. Gary Klausner: denying 22 Motion for Appointment as Lead Plaintiff and Approving its Selection of Lead Counsel. (bp) (Entered: 10/17/2014)
10/20/2014	38	ORDER SETTING SCHEDULING CONFERENCE by Judge R. Gary Klausner. A scheduling conference has been placed on calendar for January 12, 2015 at 9:00 a.m. The Conference will be held pursuant to F.R.Civ. P. 16(b).

Date Filed	#	Docket Text
		Trial counsel must be present and there are no telephonic appearances. Counsel are ordered to file a joint statement providing a brief factual summary of the case, including the claims being asserted. The parties are reminded of their obligations to disclose information and confer on a discovery plan not later than 21 days prior to the scheduling conference, and to file a joint statement with the Court not later than 14 days after they confer, as required by F.R. Civ.P. 26 and the Local Rules of this Court. Failure to comply may lead to the imposition of sanctions. Plaintiff's counsel is directed to give notice of the scheduling conference to all parties that have appeared in this action, and is further directed to give notice of the scheduling conference immediately to each party that makes an initial appearance in the action after this date. Not later than 5 court days prior to the Scheduling Conference, coun-

Date Filed	#	Docket Text
		sel are ordered to confer and electronically file (joint) Form ADR-1 (and proposed order, Form ADR 12), selecting one of the three settlement options available. (sw) (Entered: 10/20/2014)
10/20/2014	39	REPLY In Support Of MOTION to Dismiss Defendant Charles Law 27 filed by Defendant Charles Law. (Attachments: # 1 Proposed Order Granting Defendant Charles Law's Motion to Dismiss Plaintiffs' Amended Complaint) (Economou, Cary) (Entered: 10/20/2014)
10/20/2014	40	REPLY In Support Of MOTION to Dismiss The Resh Plaintiffs' Putative Class Action or, In the Alternative, Class Allegations As Barred By Statute of Limitations 28 filed by Defendant China Agritech, Inc.. (Attachments: # 1 Declaration of Seth Aronson in Support (SUPPLEMENTAL), # 2 Exhibit 29 to Aronson Supplemental Declaration)(Aronson, Seth) (Entered: 10/20/2014)

Date Filed	#	Docket Text
10/20/2014	41	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss The Resh Plaintiffs' Putative Class Action or, In the Alternative, Class Allegations As Barred By Statute of Limitations 28 *(SUPPLEMENTAL)* filed by Defendant China Agritech, Inc.. (Aronson, Seth) (Entered: 10/20/2014)
10/27/2014	42	SCHEDULING NOTICE TO ALL PARTIES AND ORDER by Judge R. Gary Klausner. Defendant China Agritech, Inc.'s Motion to Dismiss The Resh Plaintiffs' Putative Class Action or, In the Alternative, Class Allegations As Barred By Statute of Limitations 28; AND Defendant Charles Law's Motion to Dismiss Defendant Charles Law 27, noticed for hearing on November 3, 2014, have been taken under submission and off the motion calendar. No appearances by counsel are necessary. The Court will issue a ruling after full consideration of properly submit-

Date Filed	#	Docket Text
		ted pleadings. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (sw) TEXT ONLY ENTRY (Entered: 10/27/2014)
12/01/2014	43	MINUTES (IN CHAMBERS): Order re: Defendants Charles Law and China Agritech, Inc.'s Motions to Dismiss (DE 27, 28) by Judge R. Gary Klausner: The Court GRANTS without leave to amend Moving Defendants' Motions to Dismiss. Plaintiffs are hereby ordered to show cause in writing no later than December 8, 2014 as to why the Motions to Dismiss should not be granted as to the remaining defendants. (See document for further details) (bp) (Entered: 12/01/2014)
12/08/2014	44	RESPONSE filed by Movant CAGC Investor Group, Plaintiff Michael H. Reshto Order on Motion to Dismiss Party,,, 43 *Plaintiffs' Response to Court's December 1, 2014 Order to Show Cause* (Manifold,

Date Filed	#	Docket Text
		Betsy) (Entered: 12/08/2014)
12/19/2014	45	NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion to Dismiss Party,,, 43 *Memorandum of Points and Authorities in Support Thereof* filed by Plaintiffs CAGC Investor Group, Michael H. Resh. Motion set for hearing on 1/26/2015 at 09:00 AM before Judge R. Gary Klausner. (Attachments: # 1 Proposed Order)(Manifold, Betsy) (Entered: 12/19/2014)
01/05/2015	46	MEMORANDUM in Opposition to MOTION for Reconsideration re Order on Motion to Dismiss Party,,, 43 *Memorandum of Points and Authorities in Support Thereof* 45 *(DEFENDANT CHINA AGRITECH, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION TO RECONSIDER THE COURTS DECEMBER 1, 2014 ORDER RE DEFENDANTS CHINA AGRITECH, INC.'S AND*

Date Filed	#	Docket Text
		CHARLES LAW'S MOTIONS TO DISMISS) filed by Defendant China Agritech, Inc.. (Aronson, Seth) (Entered: 01/05/2015)
01/05/2015	47	DECLARATION of MICHELLE C. LEU In Opposition To MOTION for Reconsideration re Order on Motion to Dismiss Party,,, 43 *Memorandum of Points and Authorities in Support Thereof* 45 filed by Defendant China Agritech, Inc.. (Attachments: # 1 Exhibit 1)(Leu, Michelle) (Entered: 01/05/2015)
01/05/2015	48	REQUEST FOR JUDICIAL NOTICE re MOTION for Reconsideration re Order on Motion to Dismiss Party,,, 43 *Memorandum of Points and Authorities in Support Thereof* 45 *(DEFENDANT CHINA AGRITECH, INC.'S REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO PLAINTIFFS' MOTION TO RECONSIDER THE COURT'S DECEMBER 1, 2014 ORDER RE DEFEND-*

Date Filed	#	Docket Text
		ANTS CHINA AGRITECH, INC.'S AND CHARLES LAW'S MOTIONS TO DISMISS) filed by Defendant China Agritech, Inc.. (Læu, Michelle) (Entered: 01/05/2015)
01/05/2015	49	JOINDER filed by Defendant Charles Law joining in Declaration (Motion related), 47, MEMORANDUM in Opposition to Motion, 46, Request for Judicial Notice,, Request for Relief, 48. (Economou, Cary) (Entered: 01/05/2015)
01/07/2015	50	MINUTE ORDER IN CHAMBERS Order Re: Dismissal Order as to Plaintiffs' Claims Against Remaining Defendants by Judge R. Gary Klausner: On December 1, 2014, the Court granted motions to dismiss filed by China AG and Law pursuant to Federal Rule of Civil Procedure 12(b)(6), finding that Plaintiffs class action claims were barred by the statute of limitations. The Court ordered Plaintiffs to show cause as to why the Remaining De-

Date Filed	#	Docket Text
		fendants should not also be dismissed from this action. On December 8, 2014, Plaintiffs filed a response to the Order. Plaintiffs fail to provide an adequate reason why, in light of the Courts December 1, 2014 order, the claims against the Remaining Defendants should not also be dismissed. Therefore, the Court DISMISSES the Remaining Defendants. (Made JS-6. Case Terminated.) (bp) (Entered: 01/08/2015)
01/12/2015	51	REPLY in Support of MOTION for Reconsideration re Order on Motion to Dismiss Party,,, 43 *Memorandum of Points and Authorities in Support Thereof* 45 filed by Movant CAGC Investor Group, Plaintiff Michael H. Resh. (Manifold, Betsy) (Entered: 01/12/2015)
01/23/2015	52	NOTICE TO ALL PARTIES AND ORDER by Judge R. Gary Klausner. Plaintiffs' Motion for Reconsideration re Order on Motion to Dismiss Party 45 noticed for hearing

Date Filed	#	Docket Text
		on January 26, 2015, has been taken under submission and off the motion calendar. No appearances by counsel are necessary. The Court will issue a ruling after full consideration of properly submitted pleadings. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (pso) TEXT ONLY ENTRY (Entered: 01/23/2015)
02/23/2015	53	MINUTE ORDER IN CHAMBERS by Judge R. Gary Klausner Re: Plaintiffs' Motion for Reconsideration 45. The Court DENIES Plaintiffs' Motion. Refer to the Court's order for details. (pso) (Entered: 02/23/2015)
03/19/2015	54	NOTICE OF APPEAL to the 9th CCA filed by Plaintiffs CAGC Investor Group, Michael H. Resh. Appeal of Minutes of In Chambers Order/Directive - no proceeding held 53, Minutes of In Chambers Order/Directive - no proceeding held,,,, Terminated Case,,, 50, Order on Motion

Date Filed	#	Docket Text
		for Order 37, Order on Motion to Dismiss Party,,, 43 (Appeal fee of $505 receipt number 0973-15401827 paid.) (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Manifold, Betsy) (Entered: 03/19/2015)
03/19/2015	55	NOTIFICATION by Circuit Court of Appellate Docket Number 15-55432, 9th CCA regarding Notice of Appeal to 9th Circuit Court of Appeals, 54 as to CAGC Investor Group, Michael H. Resh. (car) (Entered: 03/20/2015)
05/24/2017	56	OPINION from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals, 54 filed by CAGC Investor Group, Michael H. Resh. CCA # 15-55432. We reverse the district court's order of dismissal and remand for further proceedings consistent with this opinion. REVERSED and REMANDED. (mat) (Entered: 05/24/2017)

Date Filed	#	Docket Text
07/11/2017	57	MANDATE of Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals,, 54,, CCA # 15-55432. The judgment of the 9th Circuit Court, entered May 24, 2017, takes effect this date. This constitutes the formal mandate of the 9th CCA issued pursuant to Rule41(a) of the Federal Rules of Appellate Procedure.[See USCA Opinion 56 REVERSED and REMANDED.](mat) (Entered: 07/13/2017)
SUBSEQUENT DOCKET ENTRIES DELETED		

APPENDIX B

Relevant Court of Appeals Docket Entries

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Relevant Docket Entries

Resh v. China Agritech, Inc.,
Case No. 15-55432

Date Filed	#	Docket Text
03/19/2015	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 03/26/2015. Transcript ordered by 04/20/2015. Transcript due 07/20/2015. Appellants Heroca Holding, B.V., Ninella Beheer, B.V., Michael H. Resh and William Schoenke opening brief due 08/31/2015. Appellees Gene Michael Bennett, Yu Chang, China Agritech, Inc., Lun Zhang Dai, Charles Law, Yau-Sing Tang, Xiao Rong Teng, Zheng Wang and Ming Fang Zhu answering brief

Date Filed	#	Docket Text
		due 09/30/2015. Appellant's optional reply brief is due 14 days after service of the answering brief.
03/26/2015	2	Filed (ECF) Appellants Michael H. Resh, William Schoenke, Heroca Holding, B.V. and Ninella Beheer, B.V. Mediation Questionnaire. Date of service: 03/26/2015.
03/31/2015	3	Filed Mediation order: This case is NOT SELECTED for inclusion in the Mediation Program. Counsel may contact circuit mediator to discuss services available through the court's mediation program, to request a settlement assessment conf, or to request a stay of the appeal for settlement purposes. Also, upon agreement of the parties, the brfing sch can be modified or vacated to facilitate settlement discussions. Csl are requested to send copies of this order to their clients. Info regarding the mediation program may be found at

Date Filed	#	Docket Text
		www.ca9.uscourts.gov/mediation.
08/14/2015	4	Filed (ECF) Streamlined request for extension of time to file Opening Brief by Appellants Michael H. Resh, William Schoenke, Heroca Holding, B.V. and Ninella Beheer, B.V.. New requested due date is 09/30/2015.
08/14/2015	5	Streamlined request [4] by Appellants Heroca Holding, B.V., Ninella Beheer, B.V., Michael H. Resh and William Schoenke to extend time to file the brief is approved. Amended briefing schedule: Appellants Heroca Holding, B.V., Ninella Beheer, B.V., Michael H. Resh and William Schoenke opening brief due 09/30/2015. Appellees Gene Michael Bennett, Yu Chang, China Agritech, Inc., Lun Zhang Dai, Charles Law, Yau-Sing Tang, Xiao Rong Teng, Zheng Wang and Ming Fang Zhu answering brief due 10/30/2015. The op-

Date Filed	#	Docket Text
		tional reply brief is due 14 days from the date of service of the answering brief.
09/30/2015	6	Submitted (ECF) Opening Brief and excerpts of record for review. Submitted by Appellants Michael H. Resh, William Schoenke, Heroca Holding, B.V. and Ninella Beheer, B.V.. Date of service: 09/30/2015.
10/01/2015	7	Filed clerk order: The opening brief [6] submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. The Court has reviewed the excerpts of record [6] submitted by appel-

Date Filed	#	Docket Text
		lants. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30¬1.6. [9703991] (KT)
10/06/2015	8	Filed (ECF) Streamlined request for extension of time to file Answering Brief by Appellee China Agritech, Inc.. New requested due date is 11/30/2015.
10/06/2015	9	Filed (ECF) Streamlined request for extension of time to file Answering Brief by Appellee Charles Law. New requested due date is 11/30/2015.
10/06/2015	10	Streamlined request [9], [8] by Appellees China Agritech, Inc. and Charles Law to extend time to file the brief is approved. Amended briefing schedule: Appellees China Agritech, Inc. and Charles Law answering brief due 11/30/2015. The optional reply brief is due 14 days

Date Filed	#	Docket Text
		from the date of service of the answering brief.
10/07/2015	11	Filed Appellants' paper copies of excerpts of record [6] in 2 volume(s).
10/07/2015	12	Received 7 paper copies of Opening brief [6] filed by appellants.
11/30/2015	13	Submitted (ECF) Answering Brief for review. Submitted by Appellee China Agritech, Inc.. Date of service: 11/30/2015.
11/30/2015	14	Submitted (ECF) supplemental excerpts of record. Submitted by Appellee China Agritech, Inc.. Date of service: 11/30/2015.
11/30/2015	15	Filed (ECF) Appellee Charles Law Correspondence: Appellee Charles Law's Notice of Joinder and Joinder in the Answering Brief of Appellee China Agritech, Inc. filed on November 30, 2015. Date of service: 11/30/2015
12/01/2015	16	Filed clerk order: The answering brief [13] submitted by China Agritech, Inc.

Date Filed	#	Docket Text
		is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. The Court has reviewed the supplemental excerpts of record [14] submitted by China Agritech, Inc.. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6.
12/03/2015	17	Received 7 paper copies of Answering brief [13] filed by China Agritech, Inc..
12/03/2015	18	Filed Appellee China Agritech, Inc. paper copies

Date Filed	#	Docket Text
		of supplemental excerpts of record [14] in 1 volume.
12/09/2015	19	Filed (ECF) Streamlined request for extension of time to file Reply Brief by Appellants Michael H. Resh, William Schoenke, Heroca Holding, B.V. and Ninella Beheer, B.V.. New requested due date is 01/13/2016.
12/09/2015	20	Streamlined request [19] by Appellants Heroca Holding, B.V., Ninella Beheer, B.V., Michael H. Resh and William Schoenke to extend time to file the brief is approved. Amended briefing schedule: the optional reply brief is due 01/13/2016.
12/31/2015	21	Filed (ECF) Appellee Charles Law Correspondence: Letter to court regarding removal of M. Taylor Florence from service list due to retirement. Date of service: 12/31/2015
12/31/2015	22	Terminated M. Taylor Florence for Charles Law in 15-55432

Date Filed	#	Docket Text
01/13/2016	23	Submitted (ECF) Reply Brief for review. Submitted by Appellants Michael H. Resh, William Schoenke, Heroca Holding, B.V. and Ninella Beheer, B.V.. Date of service: 01/13/2016.
01/14/2016	24	Filed clerk order: The reply brief [23] submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF.
01/19/2016	25	Received 7 paper copies of Reply brief [23] filed by appellants.
06/22/2016	26	Filed (ECF) notice of appearance of Matthew M. Guiney for Appellants Mi-

Date Filed	#	Docket Text
		chael H. Resh, William Schoenke, Heroca Holding, B.V. and Ninella Beheer, B.V.. Date of service: 06/22/2016.
06/22/2016	27	Added attorney Matthew M. Guiney for Heroca Holding, B.V. Michael H. Resh William Schoenke Ninella Beheer, B.V., in case 15-55432.
06/22/2016	28	Filed (ECF) Appellants Michael H. Resh, William Schoenke, Heroca Holding, B.V. and Ninella Beheer, B.V. citation of supplemental authorities. Date of service: 06/22/2016.
06/28/2016	29	Filed (ECF) Appellee China Agritech, Inc. citation of supplemental authorities. Date of service: 06/28/2016.
08/29/2016	30	This case is being considered for the December 2016 Pasadena oral argument calendar. The exact date of your oral argument has not been determined at this time. The following is a link to the upcoming court sessions:

Date Filed	#	Docket Text
		http://cdn.ca9.uscourts.gov/datastore/uploads/calendar/sitdates_2016.pdf. Please review these upcoming dates immediately to determine if you have any conflicts with them. If you do have conflicts, please inform the Court within 3 days of this notice by sending a letter to the Court using CM/ECF (Type of Document: File Correspondence to Court; Subject: regarding availability for oral argument). The Court discourages motions to continue after this 3-day period. The clerk's office takes conflict dates into consideration in scheduling oral arguments but cannot guarantee that every request will be honored. Your case will be assigned to a calendar approximately 10 weeks before the scheduled oral argument date. Note that your case will be set for hearing in due course if it is not assigned to this calendar. In addition, if par-

Date Filed	#	Docket Text
		ties would like to discuss settlement before argument is scheduled, they should jointly request a referral to the mediation unit. Such a referral will postpone the calendaring of oral argument. All such requests must be made within 3 days of this notice by sending a letter to the Court using CM/ECF (Type of Document: File Correspondence to Court; Subject: request for mediation). Once the case is calendared, it is unlikely that the court will postpone argument for settlement discussions.
08/29/2016	31	Filed (ECF) Appellee China Agritech, Inc. Correspondence: regarding availability for oral argument. Date of service: 08/29/2016
09/26/2016	32	Notice of Oral Argument on Monday, December 5, 2016 - 09:30 A.M. - Courtroom 1 - Pasadena CA. View the Oral Argument Calendar for your case here. Be sure to review the GUIDELINES for im-

Date Filed	#	Docket Text
		portant information about your hearing, including when to arrive (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible). When you have reviewed the calendar, download the ACKNOWLEDGMENT OF HEARING NOTICE form, complete the form, and file it via Appellate ECF or return the completed form to: PASADENA Office.
09/27/2016	33	Filed (ECF) Acknowledgment of hearing notice. Location: Pasadena. Filed by Attorney Matthew M. Guiney for Appellants Heroca Holding, B.V., Ninella Beheer, B.V., Michael H. Resh and William Schoenke. [10138701] [15-55432] (Guiney, Matthew)
09/27/2016	34	Filed (ECF) Acknowledgment of hearing notice. Location: Pasadena. Filed by Attorney Mr. Seth Alben Aronson for Appellee China

Date Filed	#	Docket Text
		Agritech, Inc..
09/28/2016	35	Filed (ECF) Acknowledgment of hearing notice. Location: Pasadena. Filed by Attorney Cary Joy Economou, Esquire for Appellee Charles Law.
12/05/2016	36	ARGUED AND SUBMITTED TO STEPHEN REINHARDT, WILLIAM A. FLETCHER and RICHARD A. PAEZ.
05/24/2017	37	FILED OPINION (STEPHEN REINHARDT, WILLIAM A. FLETCHER and RICHARD A. PAEZ) REVERSED AND REMANDED. Judge: WAF Authoring, FILED AND ENTERED JUDGMENT.
06/07/2017	38	Filed (ECF) Appellee China Agritech, Inc. petition for rehearing en banc (from 05/24/2017 opinion). Date of service: 06/07/2017.
06/08/2017	39	Filed (ECF) Appellee Charles Law Correspondence: Notice of joinder to petiton for rehearing. Date of service: 06/08/2017

Date Filed	#	Docket Text
		[COURT UPDATE: Updated docket text to reflect correct ECF filing type. 06/08/2017 by SLM]
06/19/2017	40	Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by Chamber of Commerce of the United States of America and Retail Litigation Center. Date of service: 06/19/2017.
06/19/2017	41	Entered appearance of Amici Curiae Chamber of Commerce of the United States of America and Retail Litigation Center, Inc.
06/19/2017	42	Filed clerk order: The amicus brief [40] submitted by Chamber of Commerce of the United States of America and Retail Litigation Center, Inc. is filed. Within 7 days of the filing of this order, filer is ordered to file 20 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submit-

Date Filed	#	Docket Text
		ted electronically. Cover color: green. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF.
06/22/2017	43	Received 20 paper copies of Amicus Brief [40] filed by Chamber of Commerce of the United States of America and Retail Litigation Center, Inc.
07/03/2017	44	Filed order (STEPHEN REINHARDT, WILLIAM A. FLETCHER and RICHARD A. PAEZ): The panel has voted to deny the petition for rehearing and to deny the petition for rehearing en banc, filed June 7, 2017. The full court has been advised of the petition for en banc rehearing, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35(b). The petition for rehearing and the petition for rehearing en banc are DENIED.

Date Filed	#	Docket Text
07/06/2017	45	Filed (ECF) Appellee China Agritech, Inc. Motion to stay the mandate. Date of service: 07/06/2017.
07/07/2017	46	Filed order (STEPHEN REINHARDT, WILLIAM A. FLETCHER and RICHARD A. PAEZ): Defendants-Appellees' motion for a stay of the mandate pending the filing and disposition of a petition for certiorari is DENIED.
07/11/2017	47	MANDATE ISSUED.(SR, WAF and RAP)
09/26/2017	48	**Supreme Court Case Info** Case number: 17-432 Filed on: 09/21/2017 Cert Petition Action 1: Pending [10594158] (RR)
12/11/2017	49	**Supreme Court Case Info** Case number: 17-432 Filed on: 09/21/2017 Cert Petition Action 1: Granted, 12/08/2017

APPENDIX C

Resh Amended Complaint

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

MICHAEL H. RESH, WILLIAM SCHOENKE, HEROCA HOLDING B.V., AND NINELLA BEHEER B.V., On Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

CHINA AGRITECH, INC.; YU CHANG; YAU-SING TANG; GENE MICHAEL BENNETT; XIAO RONG TENG; MING FANG ZHU; LUN ZHANG DAI; HAI LIN ZHANG; CHARLES LAW; ZHENG ANNE WANG; and DOES 1 to 10, Inclusive,

Defendants.

Case No. CV 14-05083-RGK (PJWx)

AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

Michael H. Resh, William Schoenke, Heroca Holding B.V. and Ninella Beheer B.V. ("Plaintiffs") individually and on behalf of all other persons similarly situated, by and through their undersigned attorneys, allege in this Complaint (the "Complaint") the following upon knowledge with respect to their own acts, and upon facts obtained through an independent investigation conducted by their counsel,

which included, *inter alia*: (a) review and analysis of relevant filings made by China Agritech, Inc. ("CAGC" or the "Company") with the United States Securities and Exchange Commission (the "SEC"); (b) review and analysis of defendants' public documents, conference calls and press releases; (c) review and analysis of securities analysts' reports and advisories concerning the Company; (d) information readily obtainable on the Internet; (e) interviews by investigators of several witnesses with personal knowledge of certain relevant facts; (f) investigation of Chinese State Administration of Industry and Commerce ("SAIC") filings;[1] (g) investigation of Chinese State Administration of Taxation ("SAT") filings;[2] and (h) review of the orders entered in pleadings and prior actions formerly and presently pending against the Company, as detailed below; and (i) investigation and analysis of companies alleged to be suppliers of the Company.

NATURE OF THE ACTION

1. This is a class action on behalf of a class consisting of all persons and entities, other than defendants and their affiliates, who purchased the pub-

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[1] The SAIC (State Administration for Industry and Commerce) is the Chinese government body that regulates industry and commerce in China. It is primarily responsible for business registrations, issuing and renewing business licenses and acts as the government supervisor of corporations. All Chinese companies are required to file financial statements with the Chinese government annually or biannually.

[2] The SAT (State Administration of Taxation) is the People's Republic of China ("PRC") equivalent of the Internal Revenue Service in the U.S.

licly traded common stock of CAGC between November 12, 2009 through March 11, 2011 (the "Class Period"), seeking to recover damages caused by defendants' violations of the federal securities laws (the "Class").

2. This Complaint alleges claims for violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), and Rule 10b-5 promulgated thereunder, on behalf of all Class members.

3. CAGC is a holding company. Its purported business operations are primarily conducted through its direct and indirect subsidiaries in the PRC. It purports to manufacture and sell organic compound fertilizers and related agricultural products.

4. During the Class Period, CAGC and its officers and directors engaged in a systemic and wide-ranging scheme that fraudulently created nearly all of CAGC's reported revenue and earnings:

- Overstating revenue by at least 1,100% for fiscal 2009 and 1,500% for fiscal 2008.
- Reporting $76.13 million of revenue in 2009 and $45.24 million in 2008 on CAGC's Form 10-Ks filed with the SEC, when the true revenue figures according to CAGC's SAIC and SAT filings in PRC were not more than $6.99 million in 2009 and $2.95 million in 2008.
- Overstating net income by at least 600% for fiscal 2009. Reporting a profit for fiscal 2008, while the Company was in fact losing money.
- Reporting $6.17 million of net income in 2009

and $8.6 million in 2008, when the true net income figures were not more than $0.97 million in 2009 and a net loss of ($1.89) million in 2008.

- Failing to disclose material related party transactions - CAGC signed a contract effective December 8, 2008 to pay Shenzhen Hongchou Technology Co. ("Shenzhen Hongchou"), a company controlled by CAGC's Chief Executive Officer ("CEO") Yu Chang ("Chang") approximately $4.0 million for raw materials.

- CAGC has maintained two materially different sets of financial reports, accounts, and/or records. The first set of records was filed with the SEC for the benefit of investors. Said records were replete with material falsities misrepresenting the Company's business operations. The other set of records, provided to Chinese authorities, reflected results for the Company that were only a tiny fraction of the false figures reported to the SEC that investors relied upon.

5. During the Class Period when CAGC was issuing false and misleading financial statements, Defendants Teng, Tang and Zhu sold over $3.0 million of CAGC stock and CAGC sold approximately $23 million in a public offering to unwitting investors.

6. Then, on March 14, 2011, CAGC's auditor Ernst & Young Hua Ming ("E&Y") stated that it "may not be able to rely on management's representations."

7. That same day, CAGC terminated E&Y's role as auditor and NASDAQ delisted and halted trading in CAGC's stock "in order to protect the public interest."

8. In the wake of the scandal, nearly all of the Company's directors and officers resigned.

9. CAGC has not filed its annual report for 2010 on Form 10-K with the SEC, which was originally due on March 16, 2011. Consequently, on October 17, 2012 the SEC issued an enforcement order revoking the registration of CAGC's stock. Thus, CAGC's stock is no longer publicly traded, effectively rendering it worthless. The last trade of CAGC shares prior to the revocation order was at $0.16/share. To date, CAGC still has not filed any reports with the SAC.

10. CAGC's false statements have caused investors substantial losses as its shares have dropped from $10.78/share to nearly zero as a result of defendants' violations of the securities laws.

JURISDICTION AND VENUE

11. The Exchange Act claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and SEC Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5).

12. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

13. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act (15 U.S.C. §

78aa), 28 U.S.C. § 1391(b), 28 U.S.C. § 1391(d).

14. In connection with the acts, conduct and other wrongs alleged herein, Defendants either directly or indirectly used the means and instrumentalities of interstate commerce, including but not limited to the United States mails, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

15. Plaintiff Michael H. Resh purchased CAGC common stock during the Class Period and has suffered damages as a result.

16. Plaintiff William Schoenke purchased CAGC common stock during the Class Period and has suffered damages as a result.

17. Plaintiff Heroca Holding B.V. purchased CAGC common stock during the Class Period and has suffered damages as a result.

18. Plaintiff Ninella Beheer B.V. purchased CAGC common stock during the Class Period and has suffered damages as a result.

19. Defendant CAGC is a Delaware corporation incorporated in 2004. During the Class Period, its principal executive offices were located at Room 3F, No. 11 Building, Zhonghong International Business Garden, Future Business Center, Chaoyang North Road, Chaoyang District, Beijing, China 100024, and a CAGC subsidiary, CAI Investment Inc., a California corporation in good standing. Based upon investigation of counsel, CAI Investment Inc. purportedly maintains office(s) located at 925 Mill Page Road, Palo Alto, California 94304-1013, 970 Wallace Drive,

San Jose, California 95120, either or both.[3]

20. CAGC, through its subsidiaries, purports to manufacture and sell organic compound fertilizers and related agricultural products in the PRC.

21. To have its stock publicly traded in the United States, CAGC employed a device called a "reverse merger" in 2005. In a reverse merger, a publicly traded shell company acquires the private company seeking to go public. In exchange, the shareholders of the former private company receive a controlling share of the public company.

22. As a result of the reverse merger, CAGC became a holding company that primarily operates through its subsidiaries in the PRC.

23. Defendant Chang was and is the Company's CEO, President, Secretary and, Chairman of the Board at all relevant times herein. In addition, Defendant Chang was a substantial shareholder of the Company throughout the Class Period. When the Company filed its 2008 10-K and 2009 10-K, Defendant Chang owned 41.96% and 40.23% of the Company's stock, respectively. Chang was and is the President of CACG's California wholly-owned subsidiary, CAI Investment Inc. Chang was also a 90% owner of CAGC's third largest supplier during the relevant time period. *See* ¶ 82, *infra*.

24. Defendant Yau-Sing Tang a/k/a Gareth Tang

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[3] *See* China Agritech, Inc., Annual Report, Ex. 21 (Form 10-K) (Apr. 2, 2007); *see also* California Sec. of State, Business Entities, http://kepler.sos.ca.gov (query "CAI Investment" after selecting "Corporation Name"; then follow "CAI Investment Inc." hyperlink).

("Tang") was the Company's Chief Financial Officer ("CFO") and Controller from October 2008 through January 16, 2012—when he suddenly resigned. In addition, Defendant Tang was a shareholder of the Company throughout the Class Period. When the Company filed its 2008 10-K and 2009 10-K, Defendant Tang owned 0.4% and 1.04% of the Company's stock, respectively.

25. Defendant Gene Michael Bennett ("Bennett") was a director of CAGC from October 2008 through June 7, 2012—when he resigned. At all times during the Class Period, Bennett was the chair of CAGC's Audit Committee until his resignation from the Audit Committee on or about April 25, 2011, as well as a member of CAGC's Nominating and Governance Committee. After the CAGC Defendants' fraud was disclosed, Bennett was the chair of the Company's Special Committee investigating the allegations of fraud, until he resigned from the Special Committee on April 25, 2011.

26. Bennett has served as an officer and/or director of numerous Chinese reverse merger frauds. Bennett served as a director and CFO of Duoyuan Printing, Inc.—which is the target of an SEC investigation for filing materially false and misleading financial statements.

27. Bennett also served as director of China Shenghuo Pharmaceutical Holdings—a company like Duoyuan, that was subject to civil securities class action lawsuits. According to a March 30, 2011, Bloomberg BusinessWeek article, Bennett's biographies listed in certain SEC filings of companies where he was employed, misstated his qualifications.

Contrary to the descriptions, Bennett never worked with the accounting firm of Grant Thornton and he never received a law degree from the University of Michigan. The misstated qualifications appeared in China Pharma Holdings, Inc.'s ("China Pharma") 2008 and 2009 10-K. Interestingly, China Pharma was represented by defendant Charles Law and his law firm, King & Wood, in connection with its securities' registration, and in 2011, China Pharma had to restate its financial statements for fiscal years 2009 and 2010.

28. Defendant Xiao Rong Teng ("Teng") was and is a director of CAGC at all relevant times herein. Teng also served as the Company's Chief Operating Officer ("COO") from February 2005 to March 2009. Teng was also a director of Pacific Dragon since 2000, and a director of Tailong since 2003. In addition, Teng was a substantial shareholder of the Company throughout the Class Period. When the Company filed its 2008 10-K and 2009 10-K, Teng owned 2.53% and 2.15% of the Company's stock, respectively.

29. Defendant Ming Fang Zhu ("Zhu") was CAGC's COO from March 2009 through May 27, 2011- when he resigned. From April 2007 to March 2009, Zhu served as President of Beijing Agritech Fertilizer Co, Ltd., an indirect subsidiary of the Company.

30. Defendant Lun Zhang Dai ("Dai") was and is a director of CAGC at all relevant times. Dai also serves as a member of the Company's Audit Committee, Compensation Committee and Nominating and Governance Committee. Dai is referred to in

CAGC's SEC filings as Lun Zhang Dai and Lunzhang Dai. Defendant Dai's daughter Lingxiao Dai also became employed by the Company on May 1, 2009 as Vice President of Finance, and has been the head of the Company's internal audit department since January 2010.

31. Defendant Hai Lin Zhang ("Zhang") was a director of CAGC from October 2008 through March 13, 2012—when Zhang resigned. Zhang also served as a member of the Company's Audit Committee, Compensation Committee and Nominating and Governance Committee during his entire tenure on the Board. Zhang is referred to in CAGC's SEC filings as Hai Lin Zhang and Hailin Zhang.

32. Defendant Charles Law a/k/a Charles C. Law, Chien-Lee C. Loh, Charles Chien-Lee Law, and Charles Chien-Lee Loh. (together "Law") was a director of CAGC from January 2010 until his resignation in February 2011. Law also served on the Compensation and Nominating and Governance Committees during his that time. According to the Company's SEC filings, Law is a qualified U.S. attorney who has an understanding of SEC compliance requirements. Law's law firm, King & Wood, represented CAGC in connection with CAGC's initial reverse merger registration. It appears that Law and/or King & Wood have been involved with registration of many Chinese reverse merger companies.

33. Defendant Zheng "Anne" Wang ("Wang") was a director of CAGC from December 2009 until March 14, 2011. According to a Schedule 14A filed by CAGC with the SEC on July 21, 2010, Wang has been Vice-President of Carlyle Asia Growth Capital,

a subsidiary of the private equity firm The Carlyle Group ("Carlyle"), since December 2007, and Wang was Carlyle's designee to CAGC's board and was determined by the Board of Directors not to be an "independent director."

34. Defendants Chang, Tang, Bennett, Teng, Zhu, Dai, Zhang, Law, and Wang are collectively referred to hereinafter as the "Individual Defendants."

PROCEDURAL HISTORY

35. Stockholders sued CAGC and its officers and directors concerning the issues related in this Complaint on two prior occasions and other stockholders commenced a derivative litigation in Delaware Chancery Court on behalf of the Company against members of its Board of Directors which were consolidated and remain pending. In each of these cases, a court has denied defendants' motions to dismiss the pleading.

36. Specifically, on February 2, 2011, Theodore Dean ("Dean"), on behalf of himself and all others similarly situated, filed a complaint against CAGC and several individual defendants, including members of CAGC's executive management team and board of directors. See *Dean v. China Agritech, et al.*, Case No. CV 11-1331-RGK (C.D. Cal.) (the "*Dean* Action") (Dkt. 1). On June 22, 2011, Mr. Dean filed an amended complaint, which added Slava Vanous, Randolph Daniels-Kolin, Clair Harpster, and Tan Tee Yong as plaintiffs. *Id.* (Dkt. 30). It also added several additional individual defendants, Rodman and Renshaw, LLC, and Crowe Horwath, LLP, as defendants. *Id.* The amended complaint alleged claims for violations of: (1) Section 10(b) of the Ex-

change Act and SEC Rule 10b-5 against CAGC and all individual defendants; (2) Section 20(a) of the Exchange Act against the individual defendants; (3) Section 11 of the Securities Act of 1933 ("Securities Act") against all defendants; and (4) Section 15 of the Securities Act against the individual defendants.

37. On October 27, 2011, Judge R. Gary Klausner of this Court granted in part and denied in part Defendants' motions to dismiss in the *Dean* Action. *See* Order Deny'g Mots. to Dismiss *Dean* Action (Dkt. 85) (Oct. 27, 2011). Judge Klausner' s order stated that the *Dean* Action's amended complaint sufficiently alleged Exchange Act claims against CAGC and the Individual Defendants while dismissing plaintiffs' Securities Act claims that were brought against these same defendants and the other defendants. *Id.*

38. Upon information and belief premised upon a review of the docket and conversations with the prior counsel representing plaintiffs in the *Dean* Action, on or about January 6, 2012, the *Dean* plaintiffs, by their counsel, moved to certify a class pursuant to Rule 23 of the Federal Rules of Civil Procedure. Pls.' Mot. to Certify Class, *Dean* Action (Dkts. 94-96). On May 3, 2012, however, Judge Klausner denied the motion. *See* Order Deny'g Pls.' Mot. to Certify Class, Dean Action (Dkt. 134) (May 3, 2012). In so ruling, Judge Klausner held that the *Dean* plaintiffs failed to satisfy the second and fifth factors under *Cammer v. Bloom*, 711 F. Supp. 1264 (D.N.J. 1989). *Id.* First, plaintiffs' expert failed to list the number of securities industry analysts that covered CAGC, therefore there was insufficient record evidence supporting a finding of market efficiency. *Id.* Second, the Court found that plaintiffs' two different experts came to

separate conclusions concerning whether there was a causal relationship between CAGC's disclosures and movement in the price of its stock. *Id.* Accordingly, class certification was denied because plaintiffs failed to demonstrate that CAGC's stock traded on an efficient market, and, thus, plaintiffs were not entitled to the fraud-on-the-market presumption of reliance. *Id.*

39. The *Dean* plaintiffs filed a Rule 23(f) of the Federal Rules of Appellate Procedure petition with the Ninth Circuit Court of Appeals seeking interlocutory review of the denial of class certification, but on August 8, 2012, the Ninth Circuit denied the *Dean* plaintiffs' petition. *See* Order from the 9th CCA, *Dean* Action (Dkt. 164) (Aug. 8, 2012).

40. On September 14, 2012, the plaintiffs entered into an agreement of settlement with defendants on an individual basis and the case was dismissed on September 20, 2012 by order of the Court. *See* Stipulation of Settlement (Dkt. 204) and Order (Dkt. 205), *Dean* Action.

41. Undeterred, on October 4, 2012, the same counsel as in the *Dean* Action filed a new complaint in the District of Delaware styled *Smyth v. Yu Chang, et al.*, 1:12-cv-01262, which alleged substantially the same claims on behalf of the same putative class as was alleged in the *Dean* Action (the "*Smyth* Action"). The *Smyth* Action subsequently was transferred to the Central District of California (*see* Order Grant'g CACG's Mot. to Transfer, *Smyth* Action (Dkt. 41, Apr. 19, 2013)), where it was eventually deemed related to the *Dean* Action and reassigned to Judge Klausner. *See* Order re Transfer Pursuant to

Gen. Order 8-05, *Smyth* Action (Dkt. 54) (May 10, 2013).

42. On July 18, 2013, Mr. Smyth, along with Te Gyun Kim, Premium Alliance Investment Limited, San Chul Han, HSP Investment Limited, and Seung Ho Lee filed an Amended Class Action Complaint against CAGC and members of its executive management team and board of directors alleging violations under the Exchange Act (the "Kim Group"). *See* Amended Compl., *Smyth* Action (Dkt. 76). And again, on September 26, 2013, Judge Klausner denied defendant China Agritech's motion to dismiss for substantially the same reasons related in the *Dean* Action's decision denying the motion to dismiss. *See* Order Deny'g CACG's Mot. to Dismiss, *Smyth* Action (Dkt. 113).

43. On the same day, however, Judge Klausner ruled on two competing motions seeking appointment as lead plaintiff (*see* Mots. for Appointment of Lead Pl. (DE Dkts. 4&5)) and the Kim Group's motion for class certification (*see* Mot. Class Cert. (DE Dkt. 85). *See* Order Deny'g Mots., *Smyth* Action (Dkt. 112) (Sep. 26, 2013). In denying the Kim Group's motion for class certification, Judge Klausner found that the members of the group were inadequate class representatives and their claims were atypical because its members faced unique defenses. *See id.* With respect to typicality, the Court ruled that since the members of the Kim Group were associated with the *Dean* plaintiffs and may have controlled the earlier movants' litigation strategy in part, whose claims were not certified, the defendants could avail themselves of the defense of claim preclusion. *Id.* Next, the Court found the members of

the Kim Group and its chosen counsel inadequate. *Id.* The inadequacy of the Kim Group was founded on its members' failure to execute new plaintiffs' certification and their reliance on the certification filed over two years ago in the *Dean* Action. *Id.* Moreover, counsel's adequacy was questioned because it failed to serve defendants for years, communicate with the movants in a timely manner, and otherwise prosecute the case vigorously. *See id.*

44. On January 8, 2014, the parties once again executed a stipulation of dismissal even though on two prior occasions Judge Klausner sustained claims under the Exchange Act and twice declined to certify a class premised on a combination of suspect decision making by proposed plaintiffs' counsel, ineffective expert reports concerning market efficiency, and proposed class representatives who failed to properly execute the requisite paperwork demonstrate their standing and/or disclose their prior relationship with former movants who were not certified. *See* Stip. to Dismiss Case, *Smyth* Action (Dkt. 135). In short, class certification was denied twice based on avoidable errors, not because the claims were otherwise unfit for adjudication on a class wide basis. *See* Order Grant'g Dismissal, *Smyth* Action (Dkt. 136) (Jan. 9, 2014).

45. In addition to the actions pending in this federal court, a now-consolidated derivative action was filed in Delaware Chancery Court on or about January 10, 2012, on behalf of the Company against certain of its officers and directors, amended on or about September 14, 2012, and remains pending in Delaware Chancery Court. *See In re ChinaAgritech, Inc. Shareholder Derivative Litig.*, Case No. 7163-

VCL, Court of Chancery, State of Delaware (the "Derivative Action").

46. On or about May 21, 2013, Vice Chancellor Laster denied defendants' motions to dismiss. *See* Order Deny'g Defs.' Mots. to Dismiss, Derivative Action (Dkt. 145).

DEFENDANTS' MATERIAL OMISSIONS AND MISREPRESENTATIONS

I. The 2009 Q3 10-Q is False and Materially Misstated

47. The Class Period begins on November 12, 2009 when the Company filed with the SEC its report for the third quarter of 2009 on Form 10-Q ("2009 Q3 10-Q") containing false and misleading financial statements.

48. The false and misleading 10-Q was signed by defendants Chang and Tang. Chang and Tang also signed the accompanying Sarbanes-Oxley ("SOX") certifications, attesting to the accuracy of CAGC's financial statements.

49. The 2009 Q3 10-Q was false because it materially misstated CAGC's revenue and net income for the quarter.

II. CAGC's 2009 10-K is False and Materially Misstated

50. On April 1, 2010, the Company issued its fiscal 2009 annual report on form 10-K ("2009 10-K") containing false and misleading financial statements for fiscal years 2008 and 2009.

51. The false and misleading 2009 10-K was signed by defendants Chang, Tang, Teng, Bennett,

Dai, Zhang, Law and Wang. Defendants Chang and Tang signed the accompanying SOX certifications, attesting to the accuracy of CAGC's financial statements.

52. CAGC's 2009 10-K described its revenue recognition policy as:

Sales revenue is recognized at the date of shipment from the Company's facilities to customers when a formal arrangement exists, the price is fixed or determinable, the delivery is completed, ownership has passed, no other significant obligations of the Company exist and collectibility is reasonably assured.

53. The 2009 10-K was false and materially misstated because: (i) It materially misstated the Company's revenue and net income for fiscal year 2008 and 2009; and (ii) it concealed material related party transactions.

III. CAGC Kept Two Materially Different Sets of Books and Reported Drastically Different Revenue and Income to the SEC and SAIC/SAT

54. The revenue and net income reported by CAGC with the PRC SAIC and SAT authorities for fiscal 2008 and 2009 are substantially less than that reported by CAGC with the SEC which CAGC investors relied upon, which demonstrates that the Company kept two materially different sets of books, reporting drastically different numbers to PRC authorities and U.S. investors.

55. According to CAGC's SEC filings, in 2009 CAGC had four operating subsidiaries located in the PRC: Beijing Agritech, Pacific Dragon, Anhui

Agritech, and Xinjiang Agritech.

56. Plaintiffs' counsel obtained financial statements filed by the four subsidiaries with both the SAIC and SAT.

57. The financials reported by each of CAGC's subsidiaries with the SAIC and SAT for *entire fiscal year* 2008 are substantially similar to each other, yet in total, all of their filings report revenue and income that are substantially less than the revenue and income CAGC reported in its 2008 10-K with the SEC.[4]

2008 SAIC Financials

Subsidiary	Net Revenue		Net Income	
Anhui Agritech	¥ -615,501	$ (89,799)	¥ 3,853,674	$ 562,236
Beijing Agritech	¥ -12,371,779	$ (1,805,000)	¥ 15,828,939	$ 2,309,380
Pacific Dragon	¥ 3,935	$ 574	¥ 535,629	$ 78,146
Xinjian Agritech	¥ -	$ -	¥ -	$ -
Total	¥ -12,983,346	$ (1,894,225)	¥ 20,218,242	$ 2,949,762

2008 SAT Financials

Subsidiary	Net Revenue		Net Income	
Anhui Agritech	¥ -1,650,000	$ (237,410)	¥ 210,000	$ 30,215

[4] Currency conversion of 6.95 CHY to $1.00 USD (the average spot close for 2008) was used for each of the charts in this paragraph.

Beijing Agritech	¥ -12,370,000	$ (1,779,856)	¥ 15,820,000	$ 2,276,258
Pacific Dragon	¥ -10,000	$ (1,438)	¥ 530,000	$ 76,259
Xinjian Agritech	¥ -	$ -	¥ -	$ -
Total	¥ -14,030,000	$ (2,018,704)	¥ 16,560,000	$ 2,382,733

58. Therefore, in fiscal year 2008, the Company reported $45.24 million net revenue and $8.64 net income to the SEC, yet, the revenue it reported to the PRC SAIC and SAT was less than $3 million, with a net loss of more than ($1.89) million.

59. As such, CAGC overstated its net income and fabricated a profitable fiscal year for 2008 while the Company was in fact losing money, as shown below:

(In USD million)	**SEC 2008**	**SAIC 2008**	**SAT 2008**	**Amount of Overstatement from SAIC to SEC**
Net Revenue	$45.24	($1.89)	($2.02)	$47.13
Net Income	$9.83	$2.95	$2.38	$6.88

60. Similarly, as set forth below, the financials reported by each of CAGC' s subsidiaries with the SAIC and SAT for *entire fiscal year* 2009[5] are substantially similar to each other, yet in total, all of

[5] Currency conversion of 6.83 CHY to $1.00 USD (the average spot close for 2009) was used for each of the charts in this paragraph.

their filings report revenue and income that are substantially less than the revenue and income CAGC reported in its 2009 Q3 10-Q with the SEC alone.

2009 SAIC Financials

Subsidiary	Net Revenue		Net Income	
Anhui Agritech	¥ 532,670	$77,908	¥ -941,402	$(137,688)
Beijing Agritech	¥ 46,657,252	$6,824,030	¥ 7,615,990	$1,113,900
Pacific Dragon	¥ 583,828	$85,390	¥-72,137	$(10,551)
Xinjian Agritech	¥ -	$ -	¥ -	$ -
Total	¥ 47,773,750	$6,987,328	¥ 6,602,451	$965,661

2009 SAT Financials

Subsidiary	Net Revenue		Net Income	
Anhui Agritech	¥ 530,000	$77,599	Y- 940,000	$(137,628)
Beijing Agritech	¥ 46,640,000	$6,828,697	¥ 7,610,000	$1,114,202
Pacific Dragon	¥ 580,000	$84,919	¥-70,000	$(10,249)
Xinjian Agritech	¥ 3,820,000	$559,297	¥ -250,000	$(36,603)
Total	¥ 51,570,000	$7,550,512	¥ 6,350,000	$929,722)

(In USD Million)	SEC Nine Months Ended Sept. 30, 2009	SAIC for entire fiscal year 2009	SAT for entire fiscal year 2009
Net Revenue	$55.38	$6.99	$7.55
Net Income	$12.83	$0.97	$0.93

61. Therefore, for fiscal 2009, while the Company reported $76.13 million net revenue and $6.17 net income to the SEC, CAGC reported revenue to the PRC SAIC and SAT that was less than $7 million, with net income of less than $1 million, therefore overstating its revenue and net income for fiscal 2009 in its SEC filings, as shown below.

(In USD million)	SEC 2009	SAIC 2009	SAT 2009	Amount of Overstatement from SAIC to SEC
Net Revenue	$76.13	$6.99	$7.55	$69.14
Net Income	$6.17	$0.97	$0.93	$5.2

62. The financial statements filed by CAGC via its subsidiaries with the two PRC government authorities indicate the true financial performance of the Company because:

- Under PRC law, penalties for filing false SAIC filings include fines and revocation of the enti-

ty's business license.[6]

- If an entity's business license is revoked, the People's Bank of China[7] requires all bank accounts of that entity be closed.[8]
- Without a business license the entity cannot legally conduct any business.[9]
- The financial statements CAGC filed in the PRC with the SAIC are required by law to be prepared according to PRC GAAP and audited by PRC CPA firms.[10]

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[6] Order No. 23, Measures for the Annual Inspection of Enterprises (promulgated by the State Administration for Industry and Commerce, Feb. 24, 2006), at art. 20 (China), http://www.fdi.gov.cn/180000121_39_4741_0_7.html (hereafter "*Measures for the Annual Inspection of Enterprises*").

[7] *See* The People's Republic Bank of China, http://www.pcb.gov.cn/publish/english/963/index.html (follow "About Us" hyperlink) (last visited June 23, 2014).

[8] The People's Republic Bank of China, http://www.pcb.gov.cn/publish/english/963/index.html, at art. 49 (Apr. 25, 2003) (China) (follow "Rules & Regulations" hyperlink; then follow "Next" hyperlink; then follow first "Administrative Rules for RMB Bank Settlement Accounts 2003-04-25" hyperlink) (last visited June 23, 2014).

[9] SAIC, *Mission* at No. 2 (promulgated by the State Administration for Industry & Commerce for the People's Republic of China) *available at* http://www.saic.gov.cn/english/aboutus/Mission/.

[10] Agritech Fertilizer Limited's 2008 and 2009 financial statements filed with the SAIC were audited by Beijing Zhonghui Xingcheng CPA Firm and signed by Yu Chang. Pacific Dragon Fertilizer Co., Ltd.'s 2008 and 2009 financial statements were audited by Heilongjiang Huaxin CPA Firm and signed by Yu Chang. Xinjiang Agritech Agricultural Develop-

- Under PRC law, filing false tax documents is a crime subject to severe criminal and civil penalties, including imprisonment.[11]

IV. The Drastic Differences Between the Chinese and U.S. Filings Cannot be Explained by Different Accounting Treatment

63. Chinese Generally Accepted Accounting Principles ("PRC GAAP") and U.S. Generally Accepted Accounting Principles ("US GAAP") are substantially the same. In particular, for revenue recognition for sales of goods, US GAAP, PRC GAAP and CAGC's stated revenue recognition policy are the same.

64. First, authoritative bodies have specifically noted that there are no significant differences between PRC GAAP and US GAAP. For example, the Committee of European Securities Regulators, in a paper entitled "CESR's advice on the equivalence of Chinese, Japanese and US GAAPs (2007)," noted

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ment Co., Ltd.'s 2008 and 2009 financial statements were audited by Xinjiang Runtong CPA Firm and signed by Yu Chang. Anhui Agritech Development Co., Ltd.'s 2008 and 2009 financial statements were audited by Bengbu Tianyi CPA Firm and signed by Yu Chang.

[11] Crimes Jeopardizing Administration of Tax Collection (promulgated by the Standing Comm. Nat'l People's Cong. July 1, 1979 and by Order No. 83 of the Pres. of the People's Republic of China, Mar. 14, 1997), art. 201 (1979) (China), *available at* http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384075.htm; *see also* Administration of Tax Collection (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 28, 2001, effective May 1, 2011), art. 63 (2011) (China) *available at* http://english.gov.cn/laws/2005-09/12/content_31187.htm.

that there were no significant differences between US GAAP and International Financial Reporting Standards ("IFRS").[12]

65. There are no significant differences between IFRS and Chinese GAAP on revenue recognition.[13] Thus, transitively, there are no significant differences between PRC GAAP or US GAAP with respect to revenue recognition.

66. The law firm K & L Gates LLP has represented to the U.S. Securities & Exchange Commission in an October 27, 2010 letter that: "The basic accounting principles and practice of Chinese GAAP are similar to US GAAP. There are no substantial differences between Chinese GAAP and U.S. GAAP."[14]

67. Thus, there are no significant differences between US GAAP and PRC GAAP that can explain the differences in CAGC's SAIC financial statements and those it filed with the SEC.

68. The 2009 Q3 10-Q describes its revenue recognition policy as:

The Company's revenue recognition policies are in compliance with Staff Accounting Bulletin 104. Sales revenue is recognized at the date of shipment to customers when a formal arrangement exists, the price is fixed or determinable, the delivery is com-

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[12] *See* http://www.iasplus.com/en/binary/europe/0712cesrequivalence.pdf at 25, 2nd entry on page.

[13] *Id.* at 35, 6th entry on page.

[14] China Agritech, Inc., Quarterly Report for Period Ended Sep. 30, 2009 (Form 10-Q) (Nov. 12, 2009)

pleted, no other significant obligations of our Company exist and collectibility is reasonably assured.

The Company's revenue consists of the invoiced value of goods, net of a value-added tax ("VAT") and marketing rebate.

69. The Chinese Accounting Standard for Business Enterprise ("ASBE") No. 14, governs revenue recognition for CAGC's PRC subsidiaries, and is similar. It states:

> Chapter II Revenue from Selling Goods
>
> Article 4. No revenue from selling goods may be recognized unless the following conditions are met simultaneously:
>
> (1) The significant risks and rewards of ownership of the goods have been transferred to the buyer by the enterprise;
>
> (2) The enterprise retains neither continuous management right that usually keeps relation with the ownership nor effective control over the sold goods;
>
> (3) The relevant amount of revenue can be measured in a reliable way;
>
> (4) The relevant economic benefits may flow into the enterprise; and
>
> (5) The relevant costs incurred or to be incurred can be measured in a reliable way.

70. Accordingly, there are no significant differences between US GAAP and Chinese GAAP for recognizing revenue in CAGC's case, and such differences cannot account for the huge differences in rev-

enue and income between CAGC's SEC filed financial statements and its SAIC and SAT statements. Fraud is the only plausible explanation.

71. According to its 2009 10-K, CAGC's main business is to "manufacture and sell organic liquid compound fertilizers, organic granular compound fertilizers and related agricultural products in the PRC...." Thus, there is no other source of operating revenue and operating income other than those PRC subsidiaries, whose financials are reported to PRC authorities in SAIC and SAT filings that have been combined for the purposes of the above comparisons with CAGC's SEC filings.

V. Plaintiffs' Investigation of CAGC's Factories Indicates Defendants' Engaged In Fraud

72. CAGC's fraudulent revenue reporting has also been verified by Plaintiffs' investigators' site visits to CAGC's factories, which either sat idle with no production or operated substantially below capacity.

73. According to Plaintiffs' investigator, CAGC subsidiary Beijing Agritech's factory was non-operational, with no significant operations.[15]

- Plaintiffs' investigators visited Beijing Agritech's factory in Pinggu, Beijing on a weekday in early June, 2011. The investigators found no evidence of operations at the factory. The gate was locked. They did not see

[15] Though CAGC did not disclose in its SEC filings about annual production of Beijing Agritech, it did confirm in its February 10, 2011 Letter to Shareholders that the factory in Beijing is fully operational.

any movement of workers or machines through the window. There were no trucks or vehicles entering or exiting.

- When the investigators inquired to the gatekeepers about meeting with or talking to the sales department, they were refused entry to the factory. Nor would the gatekeepers provide any contact information for factory management. The two gatekeepers said currently no officer or manager was in the factory and no one was expected in the factory for another month and that the gatekeepers were currently the only persons in charge of the whole factory.

- The investigators also visited the local government department that supervises and regulates CAGC's (and that factory's) business. The department is known as the Administrative Committee of Beijing Xinggu Economic Development Zone. This is the government administrative organ that has responsibility for overall management of the economic zone in which CAGC's factory resides. Plaintiffs' investigator interviewed the director of the General Administrative Office's Investment Promotion Division I, and was told by him that the Administration Committee's several requests for routine site visits were always refused, and they always kept their door shut. The director also told Plaintiffs' investigator that "[a]ccording to them, most of their manufacturing activities were conducted in facilities elsewhere."

- Plaintiffs' investigators also visited the Beijing Xinggu District Administration of Quality and Technology Supervision, as the director of the General Administrative Office's Investment Promotion Division I had indicated this government body was in charge of issuing manufacturing permits for fertilizer. At the Beijing Xinggu District Administration of Quality and Technology Supervision, the investigators were informed that while that office did not issue such permits, they could inquire as to such permits and they confirmed that CAGC did not apply for or receive any fertilizer manufacturing permits.
- In addition, Plaintiffs' investigator conducted a search on the website of the Beijing Municipal Administration of Quality and Technology Supervision and found that a fertilizer manufacturing permit is issued only when a company has passed all reviews and random inspections required.

74. For Anhui Agritech, CAGC released pictures inside the factory in February 2011,[16] in an effort to rebut the negative facts in the report issued by the Lucas McGee Research on February 2, 2011 (the "LM Report").[17] Those pictures, however, show that the company did not have basic equipment, such as

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[16] *See* http://brontecapital.blogspot.com/2011/02/china-agritech-more-miracles-in-plant.html.

[17] *See* LucasMcGee Research File, *China Agritech is a Scam* (Feb. 2011) *available at* http://lucasmcgeeresearch.files.wordpress.com/2011/02/china-agritech-a-scam.pdf. (hereafter "LM Report").

forklifts, necessary for operations. One picture showed that human laborers were used to move the 40kg (881b.) fertilizer bags manually. Since this factory was reported to manufacture 100,000 tons of granular fertilizer annually, it means 37 workers have to move 2.5 million bags weighing 40kg each year (185 bags/day per person assuming they work 365 days a year), an impossible method of operation.[18]

75. As to Xinjiang Agritech, it was not incorporated until December 2008. According to the LM Report, the Xinjiang Agritech plant is actually a warehouse, shared with two other companies and demonstrates no activity.

76. In summary, CAGC materially overstated it production.

77. In addition, financial statements filed by CAGC subsidiary Pacific Dragon with local SAIC show its revenue for 2008 and 2009 was only $76,811 and $85,294, respectively, far less than the purported annual rent stated in SEC filed financial statements in $518,940.

78. There is no viable reason that any company would spend six times its revenue for rent expenses.

79. Similarly, the financial statements filed by CAGC subsidiary Anhui Agritech with the local SAIC show its revenue for 2009 was only $77,941, far less than the purported annual rent of $432,900 re-

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[18] This educated estimate based on CAGC's total employees and production capacity of each subsidiary assumes a bag is moved only once following production.

ported in CAGC's SEC filings.

80. As shown by the discrepancy between the PRC SAIC revenue, income and expenses, CAGC has been keeping two materially different sets of books, one for the PRC authorities and one for the SEC.

VI. Related Party Transactions

81. The 2009 10-K was false and misleading also because it concealed related party transactions with CAGC's CEO Chang.

82. CAGC's third largest supplier - Shenzhen Hongchou—was 90% owned by CAGC CEO, President, Secretary and Chairman of the Board Defendant Chang at all relevant times until at least January 5, 2011, when he claims to have transferred his shares to another individual, Haibo Li.[19]

83. US GAAP, Statement of Financial Accounting Standards ("SFAS"), and SEC regulations required the Company to disclose all material related party transactions.

84. Statement of Financial Accounting Standards ("SFAS") No. 57 and No. 850 provide that a public company's "[f]inancial statements shall include disclosures of material related party transactions. . . ." SFAS No. 57 ¶ 2.[20]

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[19] Perhaps not coincidentally, Ms. Haibo Li' s mother is the owner of Harbin Hai Heng Chemical Dist. Co., another principal supplier to CAGC (supplying 17% of CAGC's raw materials).

[20] *See* http://www.fasb.org/cs/BlobServer?blobkey=id&blobnocache=true&blobwhere=1175820909171&blobheader=application%2Fpd

85. "Related party transactions" include those between "an enterprise and its principal owners, management, or members of their immediate families" and those between a company and its "affiliates." *Id.*, at ¶ 1. "Affiliate" includes any company that is under common control or management with the public company. Id., at ¶ 24(a, b).

86. Disclosures of related party transactions shall include (a) the nature of the relationship involved, (b) a description of the transactions for each period for which income statements are presented and such other information necessary to an understanding of the effects of the transactions on the financial statements, (c) the dollar amount of transactions for each of the periods for which income statements are presented, and (d) amounts due from or to related parties as of the date of each balance sheet presented and, if not otherwise apparent, the terms and manner of settlement. *Id.*, at ¶ 2.

87. PRC GAAP is substantially the same as GAAP as they both require disclosure in the financial statements of related party transactions. The definition of related parties is the materially the same under PRC GAAP (specifically, ASBE No. 36 — Disclosure of Affiliated Parties) as per SFAS 57. A translated copy of ASBE 36 is attached as an exhibit hereto.

88. SEC Regulations also require disclosure of re-

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lated party transactions. SEC Regulation S-K ("Reg. S-K") (together with the General Rules and Regulations under the Securities Act of 1933, 15 U.S.C. § 77a *et seq.*, and the Exchange Act and the forms under these Acts) states the requirements applicable to the content of the non-financial statement portions of the annual reports on form 10-K, quarterly reports on form 10-Q and proxy statements on from 14A. (*See*, Reg. S-K, 17 CFR § 229.10 (2014)).

89. Reg. S-K required, at all times during the Class Period, that the Company "[d]escribe any transaction, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, in which the registrant was or is to be a participant and the amount involved exceeds $120,000, and in which any related person had or will have a direct or indirect material interest." 17 CFR § 229.404 (Item 404) (a).

90. Reg. S-K also required the disclosure of detailed information concerning related party transactions exceeding $120,000, including the names of the "related person" or entity participating in the transaction, and the amounts of the transaction. 17 CFR § 229.404 (Item 404) (a)(1-6).

91. A "related person" is defined by Reg. S-K as including any director or executive officer of the Company, any nominee for director, or any immediate family member of a director or executive officer of the registrant, or of any nominee for director or any 5% or greater shareholder. 17 CFR § 229.404 (Item 404(a)(1)(a)).

92. In its May 14, 2009 10-Q, CAGC attached a contract dated December 8, 2008 between CAGC's

subsidiary Pacific Dragon Fertilizer Co., Ltd. and Shenzhen Hongchou in which CAGC's subsidiary promised to purchase 26.9 million RMB ($4.0 million) of raw materials from Shenzhen Hongchou.[21]

93. According to CAGC's 2009 and 2008 Form 10-Ks, CAGC purchased 15% and 14.7% of its raw materials from Shenzhen Hongchou in fiscal 2009 and 2008.

94. CAGC, however, did not disclose that 90% of Shenzhen Hongchou's shares were owned by CAGC CEO, President, Secretary and Chairman defendant Chang and/or that the above purchases were related party transactions.

95. Shenzhen Hongchou's SAIC filings show that Chang has owned 90% of its shares since August 2004, while Ms. Haibo Li owned the remaining 10%.

96. In addition, Haibo Li's sister works for Pacific Dragon, the CAGC subsidiary that signed the related party contract with Shenzhen Hongchou.

97. The SAIC filings also show that Shenzhen Hongchou's annual revenue was only $4,822.00 (RMB 33,269.23) in fiscal 2008, substantially less than CAGC's purported purchases from it.

98. Notably, CAGC reported in the 2009 10-K that "[w]e purchase the majority of our raw materials from suppliers located in the PRC and use suppliers that are located in close proximity to our manufacturing facilities, which helps us to contain our

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[21] China Agritech, Inc., Quarterly Report for Period Ended Mar. 30, 2009, Ex. 10.3 *Industrial Product Purchase Contract No. 090001* (Form 10-Q) (May 14, 2009)

cost of revenue." Shenzhen Hongchou, however, is not close to Pacific Dragon Fertilizer Co., Ltd. or to any of CAGC's subsidiaries. The closest CAGC subsidiary to Shenzhen Hongchou is Anhui Agritech, which is more than 1,300 km (808 miles) away. Pacific Dragon is more than 3,000 km (1,864 miles) from Shenzhen Hongchou.

99. The only reason for CAGC to choose Shenzhen Hongchou as its major supplier is to personally benefit its majority owner, CAGC's CEO, President, Secretary and Chairman of the Board defendant Chang.

VII. CAGC's Other Suppliers Raise Serious Questions

100. According to CAGC's 2009 10-K, Beijing Zhongxin Chemical Technology Development Co. ("Beijing Zhongxin"), was its largest supplier. CAGC purchased 18% and 13.2% of its raw materials from it in fiscal years 2009 and 2008, respectively. On December 2, 2008, CAGC's subsidiary Pacific Dragon Fertilizer Co., Ltd. signed a contract to purchase 59.6 million RMB ($8.7 million) of raw materials (fulvic acid) from Beijing Zhongxin.[22]

- After extensive government database searches and website searches in all possible transliterated Chinese names, Plaintiffs' investigator could not find such company.[23] Plaintiffs' in-

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[22] *See id., supra*, at n.21.

[23] The LM Report also questioned CAGC's mysterious suppliers because those companies "cannot be found in any directory under possible Chinese names that would correspond to the transliterated names or under the alphabetic names." However,

quiry with a credit agency also found no records of any such company with the Beijing Administration for Industry & Commerce. Plaintiffs believe Beijing Zhongxin does not exist or if it does exist in some form, it is a non-operational shell company.

- If Beijing Zhongxin does exist, it should be an important and well-known player in the market for fertilizer raw materials since it has millions of dollars in annual sales. It is unlikely that CAGC is its only customer.
- Therefore, Plaintiffs' investigator believes that Beijing Zhongxin does not exist and may be a front to siphon funds from CAGC.

101. According to CAGC's 2009 10-K, Harbin Hai Heng Chemical Distribution Co., Ltd., ("Harbin Hai Heng") was its second largest supplier. On December 5, 2008, CAGC's Pacific Dragon subsidiary signed a contract with Harbin Hai Heng to purchase 43.4 million RMB ($6.0 million) of raw materials from Harbin Hai Heng.[24] CAGC purchased 17% and 12% of raw materials from Harbin Hai Heng in fiscal 2009 and 2008, respectively.

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in its response, CAGC still did not disclose the suppliers' Chinese names. It only referred to the link of its SEC filings where only English names were disclosed. It appears Defendants did not disclose the Chinese names because one of the suppliers was owned by CEO/Chairman/President Chang and he did not want to be discovered, while the other supplier does not exist.

[24] *See* China Agritech, Inc., Quarterly Report for Period Ended Mar. 30, 2009, Ex. 10.4 *Industrial Product Purchase Contract No. 090003* (Form 10-Q) (May 14, 2009).

- However, Harbin Hai Heng's PRC SAIC records show that this company did not participate in the mandatory annual inspection for fiscal year 2008 and 2009, implying that it has been a non-active business since 2007. Failing to file the annual inspection will not only bring substantial penalties, but also the risk of revocation of the entity's business license.[25] Without a business license, a company cannot conduct any business in the PRC or even maintain a bank account.
- Harbin Hai Heng is a shell company. According to a credit report issued by Qingdao Inter-Credit Services Pte Co., Ltd. ("Qingdao"), a reputable credit reporting agency in China, Harbin Hai Heng has no known phone number, no website, no information obtainable online and no determinable business operations. These facts have also been verified by Plaintiffs' investigator through extensive database searches.
- Furthermore, Harbin Hai Heng is owned by Guirong Yin who is the mother of Ms. Haibo Li, Chang's business partner in Shenzhen Hongchou, the third largest supplier of CAGC—which was 90% owned by Chang until January 2011 when Chang transferred his 90% interest to Haibo Li. Haibo Li's sister is a branch manager for CAGC subsidiary Pacific Dragon which signed the $4.0 million contract

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[25] *Measures for the Annual Inspection of Enterprises, supra,* at n.6.

with Shenzhen Hongchou. Beyond these entanglements, Defendant CEO Chang's full relationship with the Li family is not yet known.

102. According to CAGC's 2009 10-K, Langfang Tong Chuang Industrial and Trading Company Ltd ("Langfang Tong Chuang") was its fourth largest supplier, and CAGC purchased 13% of its raw materials in 2009 from Langfang Tong Chuang.

- Langfang Tong Chuang's PRC SAIC records show that this company's business scope is limited to "sales of paper, daily grocery, iron powder, construction materials, steel, auto parts, and plastic products and machining." None of CAGC's reported purchases of nitrogen, phosphorus and kalium or any similar chemical material is included within the scope of allowable business operations.
- According to PRC regulations, a company's registered business scope is determined by its Articles and monitored by local authorities. A company is not allowed to conduct any business beyond the registered scope without amendment to its Articles and SAIC registration, unless specifically approved by the SAIC.[26]
- Langfang Tong Chuang's SAIC records do not show any approval for the manufacture, sale or distribution of raw materials for fertilizer.

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[26] Company Law (promulgated by the Standing Comm. Nat'l People's Cong.), arts. 11, 20 (China) *available at* http://ch..na.org.cn/government/207344.htm.

- Furthermore, its SAIC filings show that the company's revenue was $208,370 and $216,350 for the fiscal year 2009 and 2008, respectively,[27] substantially less than CAGC's purported purchase from it.

103. There is no plausible legitimate business explanation for CAGC's payments to Beijing Zhongxin, Harbin Hai Heng and Langfang Tong Chuang as these three purported suppliers clearly did not provide raw materials to CAGC in the amounts reported by CAGC.

104. Furthermore, because operating capital is very scarce in China, it is not the general business practice to provide suppliers with large cash advances. Yet, CAGC made huge cash advances to its suppliers for the future purchase of raw materials. According to CAGC's Form 10-K filed for fiscal year 2009, total cash advances made to its suppliers amounted to $25.35 million in 2009 and $10.8 million in 2008.

ADDITIONAL FACTS SUPPORTING LIABILITY

I. *The Audit Committee Charter*

105. According to the Company's audit committee charter adopted on October 22, 2008, members of the audit committee have the responsibility to, among other things:

a. ".... (a) assist the Board's oversight of (i) the integrity of the Company's financial

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[27] Exchange rate for 2008 is RMB 6.9: USD 1, for 2009 is RMB 6.8: USD 1.

reporting process and system of internal controls...";

b. "Review and discuss with management and the independent auditors, before filing with the Securities and Exchange Commission, the annual audited financial statements and quarterly financial statements. Review with the independent auditors and management the results of the audit and the Company's specific disclosures under 'Management's Discussion and Analysis of Financial Condition and Results of Operations.' Discuss matters required to be communicated to Audit Committee in accordance with Statement on Auditing Standards No. 61."; and

c. "With the independent auditors, management and the internal auditors, periodically review and discuss significant (a) financial reporting issues and practices, and critical accounting policies and estimates (b) issues regarding accounting principles and financial statement presentation (including any significant changes in the Company's selection or application of accounting principles) and (c) issues as to the adequacy of the Company's internal control systems and compliance with applicable laws and regulations. Assess management's attitude toward internal controls, the process for establishing and monitoring internal control systems and any special audit steps adopted in light of material control deficiencies."

106. According to CAGC's 2009 10-K, the audit committee was comprised of Defendant Bennett, Dai and Zhang, with Bennett serving as the Chairman. Bennett was also determined by the board of directors to be the necessary audit committee member that qualifies as an "audit committee financial expert."

107. Defendant Bennett, Dai and Zhang as members of the audit committee had an affirmative duty of oversight and responsibility for the integrity of CAGC's financial reporting.

II. ***CAGC's Code of Ethics Acknowledges Related Party Transactions Should be Avoided***

108. The Company's Code of Ethics, adopted by the Company on April 12, 2006—which CAGC's officers and directors presumably promised to adhere to, and which CAGC's 2006 10-KSB provides applies to its CEO, CFO, Controller and "any person who may perform similar functions" - prohibits self-dealing transaction such as those engaged in by defendant CEO Chang:

The chief executive officer, chief financial officer, comptroller, chief accounting officer or persons performing similar functions (collectively, "Senior Financial Officers") hold an important and elevated role in corporate governance. Senior Financial Officers fulfill this responsibility by prescribing and enforcing the policies and procedures employed in the operation of the enterprise's financial organization, and by demonstrating the following:

I. Honest and Ethical Conduct

Senior Financial Officers will exhibit and promote the highest standards of honest and ethical conduct through the establishment and operation of policies and procedures that:

- **Prohibit and eliminate the appearance or occurrence of conflicts between what is in the best interest of the enterprise and what could result in material personal gain for a member of the financial organization, including Senior Financial Officers.**

CAGC Form 10-KSB, filed April 14, 2009, Exhibit 10.14 (emphasis added).

III. ***Respondeat Superior Liability***

109. CAGC is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency, as all of the wrongful acts complained of herein were carried out within the scope of their employment with authorization.

110. The *scienter* of the Individual Defendants and other employees and agents of the Company is similarly imputed to CAGC under *respondeat superior* and agency principles.

THE TRUTH ABOUT CAGC'S FINANCIAL STATEMENTS SLOWLY ENTERED THE MARKET THROUGH PIECEMEAL DISCLOSURES CAUSING THE PRICE OF CAGC STOCK TO DROP

111. On February 3, 2011, the LM Report published by research firm LM Research, and entitled "China Agritech: A Scam," asserted that China

Agritech was a fraud.[28]

112. The Report asserted that the Company's financial statements were fraudulent due to overstated revenue, and that the Company's factory plants are idle.

113. The adverse news disclosed by the LM Report caused the Company's stock to decline from its closing price of $10.78/share on February 2, 2011 to $9.12/share before closing at $9.85/share on February 3, 2011—a day over day decline of 8.63%.

114. The next day, CAGC vigorously denied the allegations made in the LM report. The response only helped recovery of the stock price by $0.14/share or 1%. Ironically, Charles Law, one of CAGC's Board of Directors, resigned shortly thereafter.

115. CAGC continued to deny the allegations of fraud publicly. Yet, as a result of the allegations of fraud, several analyst firms downgraded CAGC, causing a selloff and declines in its share price.

116. On February 7, 2011, analyst firm Brean Murray downgraded CAGC, and Rodman & Renshaw placed CAGC's rating under review as a result of the allegations of fraud in the LM Report.

117. On February 8, 2011, analyst firm Chardan Capital lowered its price target for CAGC to $5, and based on a lack of credibility in management, rated CAGC a sell.

118. On February 15, 2011 Bronte Capital issued a scathing report presenting additional facts indicat-

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[28] *See* LM Report, *supra*, at n.17.

ing that CAGC was a fraud and could not possibly have produced the revenue it claimed in its financial statements.[29]

119. As a result of the Bronte Capital report, CAGC stock price dropped from $9.81/share on February 7, 2011 to $7.44/share on February 16, 2011—more than 19%—on extremely heavy volume of over 2.8 million shares.

120. A month later, on March 13, 2011,[30] CAGC announced formation of a Special Committee of its Board of Directors ("the Special Committee") to investigate the allegations of fraud made by third parties.[31]

121. The next day CAGC dismissed Ernst & Young Hua Ming as the Company's independent auditor citing the following reasons as disclosed in the 8-K filed on March 18, 2011:

> On November 13, 2010, China Agritech, Inc. (the "Company") appointed Ernst & Young Hua Ming ("E&Y") as its independent registered public accounting firm. On March 14, 2011, the Company terminated the services of E&Y.

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[29] *See* http://brontecapital.blogspot.com/2011/02/china-agritech-chinas-amazing.html.

[30] Given that the last day of active trading prior to CAGC's announcement on Sunday March 13, 2011 regarding potential fraud was Friday March 11, 2011, that is the last day of the Class Period.

[31] *See* China Agritech, Inc., Current Report, Ex. 99.1 *Press Release (Mar. 13, 2011)* (Form 8-K) (Mar. 16, 2011).

> ... On December 15, 2010, E&Y provided a letter to the Audit Committee of the Board of Directors of the Company (the "Audit Committee") describing certain matters that, if not appropriately addressed in a timely manner, may result in audit adjustments, significant deficiencies or material weaknesses and/or delays in meeting the 10-K filing deadline. ... On March 8, 2011, E&Y informed the Audit Committee that it had encountered additional issues and concerns that, in E&Y's view, required additional information and procedures, **including the initiation of an independent investigation, in order to verify certain transactions and balances recorded on the Company's financial statements and records for the year ended December 31, 2010. E&Y also orally advised the Audit Committee that it may not be able to rely on management's representations based on the issues identified.**
>
> * * *
>
> **E&Y informed the Company that the issues identified in performing their audit may, if further investigated, have adverse implications for the financial statements covering the three quarterly reports filed by the Company on Form 10-Q during 2010**, and advised the Audit Committee to inform the predecessor auditors of the issues identified, so that they can assess the impact on prior financial reports.

See id., supra, at n.31 (emphases added).

122. Thus, CAGC had concealed that E &Y had

identified serious problems with its financial statements as early as December 15, 2010 and had informed CAGC's board that an internal investigation was necessary.[32] CAGC had misled investors to believe that the investigation was not connected at all with E&Y's audit and concealed that E&Y had demanded the internal investigation as a result of serious issues with CAGC's financial statements. But CAGC failed to correct the problems with the financial statements, failed to provide verification for certain transactions – prompting **"E&Y [to] . . . orally advise[] the Audit Committee that it may not be able to rely on management's representations based on the issues identified."**

123. Thus, the March 14, 2011 press release shocked investors by disclosing that Defendants had concealed that E&Y had insisted that the board commence an investigation and that Defendants had concealed that the failure of CAGC to file its 10-K timely was a result of accounting problems that E&Y had identified back in December 2010—leading to the investigation. Thus, investors learned for the first time that E&Y had identified problems with CAGC's financial statements. This news crushed any remaining credibility CAGC management had because E&Y stated it could not rely on management's representations.

124. Also on March 14, 2011, the Nasdaq delisted and halted trading in CAGC stock with its share price at $6.88/share.

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[32] After retaining a law firm and accounting firm to conduct the investigation, CAGC has still not disclosed the results of the investigation.

125. Then, Defendant Wang, a member of the Company's Board of Directors, as well as a member of the special committee of the Board of Directors, resigned without a word.

126. On May 20, 2011, CAGC stock opened for trading on the pink sheets at $1.50/share having dropped $5.38/share from its previous pre-halt trading price. CAGC shares traded as low as $1.00/share before closing for trading at $3.80/share. The next trading day, CAGC shares dropped another $0.80/share to $3.00/share on heavy trading.

127. The share price decline on May 20 and 23 was a direct result of the negative news concerning E&Y disclosed on March 14, 2011 and the resignation of defendant Wang as a director, who had served as a representative of Carlyle—further eliminating any credibility for CAGC.

128. CAGC shares were valued at $0.16/share as of October 16, 2012.

129. Thus investors have seen the value of their shares drop from $10.78/share on February 2, 2011 when the fraud was first disclosed to $0.16/share as of October 16, 2012—a loss of $10.62/share—almost all of their value.

ADDITIONAL FACTS SUGGESTIVE OF SCIENTER

I. Defendants' Stock Sales Demonstrate Scienter

130. Defendants have also profited handsomely from sales of CAGC stock. This demonstrates that defendants had a strong profit motive to inflate the stock price by overstating its financials.

131. CAGC filed a prospectus with the SEC on May 4, 2010 registering large amounts of CAGC stock owned by Defendants for sale. While it is not clear exactly how much stock each Defendant sold pursuant to the Registration Statement, Defendants were each motivated, and intended, to sell CAGC stock and earn tens of millions in profits.

132. Scienter is also supported by fact that CAGC was able to conduct an equity offering to take advantage of CAGC stock's artificially inflated price. In May, 2010, CAGC sold over 1.429 million shares of its stock at $16.10/share raising approximately $23 million; along with the exercise of warrants, CAGC raised an additional $10 million.

133. Defendants Teng, Tang and Zhu all profited handsomely from sales of CAGC stock during the period of the fraud. A list of their specific CAGC share sales are as follows.

134. Defendant Xiaorong Teng, a Director and COO, engaged in the following sales during the Class Period:

Date	# Shares	Price/Share	Proceeds
05/13/10	10,000	$16.94	$169,400.00
05/26/10	302	$12.84	$3,877.68
05/26/10	300	$12.83	$3,849.00
05/26/10	99	$12.82	$1,269.18
05/26/10	800	$12.81	$10,248.00
05/26/10	474	$12.80	$6,067.20
05/26/10	1,783	$12.79	$22,804.57

Date	# Shares	Price/Share	Proceeds
05/26/10	2,019	$12.78	$25,802.82
05/26/10	4,223	$12.77	$53,927.71
06/01/10	900	$12.95	$11,655.00
06/01/10	319	$12.93	$4,124.67
06/01/10	2,300	$12.90	$29,670.00
06/01/10	300	$12.89	$3,867.00
06/01/10	400	$12.88	$5,152.00
06/01/10	100	$12.88	$1,287.50
06/01/10	2,881	$12.87	$37,078.47
07/23/10	1,000	$12.29	$12,290.00
07/23/10	400	$12.28	$4,912.00
07/23/10	300	$12.27	$3,681.00
07/23/10	700	$12.26	$8,582.00
07/23/10	1,100	$12.25	$13,475.00
07/23/10	900	$12.24	$11,016.00
07/23/10	700	$12.22	$8,554.00
07/23/10	1,225	$12.20	$14,945.00
07/23/10	200	$12.19	$2,438.00
07/23/10	475	$12.18	$5,785.50
07/23/10	2,400	$12.17	$29,208.00
07/23/10	850	$12.16	$10,336.00
07/23/10	1,230	$12.15	$14,944.50
07/23/10	1,000	$12.14	$12,140.00
07/23/10	350	$12.13	$4,245.50

Date	# Shares	Price/Share	Proceeds
07/23/10	200	$12.12	$2,424.00
07/23/10	870	$12.10	$10,527.00
07/23/10	300	$12.08	$3,624.00
07/23/10	100	$12.07	$1,207.00
07/23/10	1,300	$12.06	$15,678.00
07/23/10	400	$12.05	$4,820.00
07/23/10	200	$12.04	$2,408.00
07/23/10	700	$12.03	$8,421.00
07/23/10	1,600	$12.02	$19,232.00
07/23/10	200	$12.01	$2,402.00
07/23/10	1,355	$12.00	$16,260.00
07/23/10	300	$11.99	$3,597.00
07/23/10	500	$11.98	$5,990.00
07/23/10	1,305	$11.97	$15,620.85
07/23/10	1,289	$11.96	$15,416.44
07/23/10	1,641	$11.95	$19,609.95
07/23/10	7,710	$11.94	$92,057.40
07/26/10	300	$12.60	$3,780.00
07/26/10	500	$12.59	$6,295.00
07/26/10	1,400	$12.58	$17,612.00
07/26/10	1,200	$12.57	$15,084.00
07/26/10	3,900	$12.56	$48,984.00
07/26/10	5,100	$12.55	$64,005.00
07/26/10	7,600	$12.54	$95,304.00

Date	# Shares	Price/Share	Proceeds
01/10/11	100	$12.94	$1,294.00
01/11/11	258	$13.03	$3,361.74
01/11/11	100	$13.01	$1,301.00
01/11/11	300	$12.99	$3,897.00
01/11/11	100	$12.98	$1,298.00
01/11/11	100	$12.97	$1,297.00
01/11/11	3,360	$12.96	$43,545.60
01/11/11	4,550	$12.95	$58,922.50
01/11/11	2,100	$12.94	$27,174.00
01/11/11	800	$12.94	$10,352.00
01/12/11	300	$13.06	$3,918.00
01/12/11	882	$13.02	$11,483.64
01/12/11	518	$13.00	$6,734.00
01/12/11	6,532	$12.97	$84,720.04
Total	**100,000 shares**		**$1,296,290.46**

135. Defendant Yau-Sing Tang, CAGC's CFO, engaged in the following sales during the Class Period:

Date	# Shares	Price/Share	Proceeds
05/12/10	10,000	$15.30	$153,000.00
05/13/10	5,000	$16.60	$83,000.00
06/07/10	5,000	$11.38	$56,921.00
08/02/10	10,000	$13.00	$130,000.00

Date	# Shares	Price/Share	Proceeds
08/03/10	5,500	$14.00	$77,000.00
08/03/10	500	$14.01	$7,005.00
08/03/10	200	$14.09	$2,818.00
08/03/10	1,900	$14.10	$26,790.00
08/03/10	300	$14.11	$4,233.00
08/03/10	200	$14.05	$2,810.00
08/03/10	800	$14.02	$11,216.00
08/03/10	200	$14.03	$2,806.00
08/03/10	400	$14.14	$5,656.00
08/06/10	850	$15.16	$12,886.00
08/06/10	300	$15.15	$4,545.00
08/06/10	350	$15.11	$5,288.50
08/06/10	200	$15.12	$3,024.00
08/06/10	800	$15.10	$12,080.00
08/06/10	400	$15.09	$6,036.00
08/06/10	300	$15.04	$4,512.00
08/06/10	1,600	$15.03	$24,048.00
08/06/10	600	$15.06	$9,036.00
08/06/10	900	$15.07	$13,563.00
08/06/10	500	$15.05	$7,525.00
08/06/10	3,200	$15.00	$48,000.00
12/29/10	5,000	$12.50	$62,500.00
12/30/10	5,000	$13.00	$65,000.00
01/06/11	5,000	$13.50	$67,500.00

Date	# Shares	Price/Share	Proceeds
Total	**65,000 shares**		**$908,798.50**

136. Defendant Mingfang Zhu, CAGC's COO, engaged in the following sales during the Class Period:

Date	# Shares	Price/Share	Proceeds
5/18/2010	1,830	$15.60	$28,548.00
5/18/2010	70	$15.61	$1,092.35
5/19/2010	847	$12.68	$10,739.96
5/19/2010	100	$12.65	$1,265.00
5/19/2010	347	$12.62	$4,379.14
5/19/2010	300	$12.64	$3,792.00
5/19/2010	353	$12.63	$4,458.39
5/19/2010	200	$12.60	$2,520.00
5/19/2010	500	$12.61	$6,305.00
5/19/2010	700	$12.72	$8,904.00
5/19/2010	853	$12.70	$10,833.10
5/19/2010	700	$12.71	$8,897.00
5/19/2010	500	$12.74	$6,370.00
5/19/2010	200	$12.79	$2,558.00
5/19/2010	700	$12.83	$8,981.00
5/19/2010	700	$12.78	$8,946.00
5/19/2010	500	$12.77	$6,385.00
5/19/2010	600	$12.76	$7,656.00
5/19/2010	400	$12.69	$5,076.00

Date	# Shares	Price/Share	Proceeds
5/19/2010	700	$12.66	$8,862.00
5/19/2010	700	$12.67	$8,869.00
5/19/2010	300	$12.82	$3,846.00
5/19/2010	250	$12.81	$3,202.50
5/19/2010	1,150	$12.84	$14,766.00
5/19/2010	1,550	$12.85	$19,917.50
5/19/2010	370	$12.86	$4,758.20
5/19/2010	500	$12.90	$6,450.00
5/19/2010	300	$12.95	$3,885.00
5/19/2010	500	$12.94	$6,470.00
5/19/2010	400	$12.91	$5,164.00
5/19/2010	300	$12.88	$3,864.00
5/19/2010	500	$12.93	$6,465.00
5/19/2010	400	$12.96	$5,184.00
5/19/2010	200	$12.92	$2,584.00
5/19/2010	680	$12.89	$8,765.20
5/19/2010	800	$12.80	$10,240.00
5/19/2010	500	$13.24	$6,620.00
5/19/2010	200	$13.26	$2,652.00
5/19/2010	300	$13.25	$3,975.00
5/19/2010	800	$13.22	$10,576.00
5/19/2010	500	$13.29	$6,645.00
5/19/2010	1,600	$13.19	$21,104.00
5/19/2010	1,900	$13.18	$25,042.00

Date	# Shares	Price/Share	Proceeds
5/19/2010	1,250	$13.13	$16,412.50
5/19/2010	450	$13.06	$5,877.00
5/19/2010	200	$13.09	$2,618.00
5/19/2010	700	$13.10	$9,170.00
5/19/2010	500	$13.07	$6,535.00
5/19/2010	300	$13.08	$3,924.00
5/19/2010	300	$13.15	$3,945.00
5/19/2010	200	$13.16	$2,632.00
5/19/2010	100	$13.11	$1,311.00
5/19/2010	100	$13.17	$1,317.00
5/19/2010	100	$13.20	$1,320.00
5/27/2010	13,182	$13.00	$171,366.00
5/27/2010	1,718	$13.01	$22,351.18
5/27/2010	1,251	$13.03	$16,300.53
5/27/2010	2,049	$13.04	$26,718.96
5/27/2010	900	$13.02	$11,718.00
5/27/2010	100	$13.08	$1,308.00
5/27/2010	300	$13.05	$3,915.00
5/27/2010	100	$13.06	$1,305.50
5/27/2010	100	$13.07	$1,307.00
5/27/2010	300	$13.06	$3,918.00
6/4/2010	13,486	$12.00	$161,832.00
6/4/2010	1,200	$12.01	$14,412.00
6/4/2010	1,214	$12.02	$14,592.28

Date	# Shares	Price/Share	Proceeds
6/4/2010	300	$12.04	$3,612.00
6/4/2010	100	$12.05	$1,205.00
6/4/2010	1,800	$12.03	$21,654.00
6/4/2010	100	$12.02	$1,201.50
6/4/2010	100	$12.11	$1,211.00
6/4/2010	1,700	$12.10	$20,570.00
Total	**70,000 shares**		**$893,171.79**

II. CAGC's Misconduct Was So Serious that NASDAQ Delisted and the Company's Securities from Trading And the SEC Revokes CAGC's Registration

137. CAGC's misconduct was evidently serious enough that on April 12, 2011, it received a letter from NASDAQ stating that:[33]

- "the staff of Nasdaq believes that the continued listing of the Company's securities on Nasdaq is no longer warranted based on public interest concerns and the Company's failure to file its 2010 Form 10-K on time (the 'Nasdaq Letter')."
- "the staff of Nasdaq believes **that the serious concerns raised by our former auditors, Ernst & Young Hua Ming ("E&Y"), relat-**

[33] CACG disclosed the letter in its 8-K filed with the SEC on April 18, 2011. *See* China Agritech, Inc., Current Report (Form 8-K) (Apr. 18, 2011) (emphasis added).

ing to issues surfacing in the audit process rise to the level of a public interest concern . . . ."

138. On October 17, 2012 the SEC issued an order revoking the registration of CAGC's common stock "for the protection of investors."[34]

III. The Revolving Door for CAGC's Auditors

139. CAGC has changed auditors four times in three years. Since 2008, the Company has had four independent auditors.

140. Kabani & Company, Inc., ("Kabani") a Los Angeles-based accountancy firm, audited the Company's 2007 financials. Kabani was the accountancy that audited the notoriously fraudulent Bodisen Biotech, an organic fertilizer company that was delisted in 2007,[35] and China Green Agriculture (CGA), a firm which was also disclosed having falsely reported its results to U.S. investors.[36]

141. Effective April 18, 2008, CAGC terminated Kabani and retained Grobstein, Horwath & Company LLP (later renamed Crowe Horwath LLP) as its

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[34] *See* China Agritech, Inc., Exchange Act Release No. 68060, 2012 SEC LEXIS 3277, 2012 WL 4909381 (Comm'n Sec. Oct. 17, 2012).

[35] *See* Bodisen Biotech, Inc., Notification Removal from Listing or Reg. Under Section 12(b) of the Exchange Act (Form 25-NSE & Attachment) (Apr. 24, 2007).

[36] *See* China Green Agriculture, http://www.cgagri.com/investor/investor5-1.htm (last visited June 23, 2014).

auditor.[37] CAGC then terminated Crowe Horwath and retained E&Y in November, 2010.[38]

142. However, CAGC fired E&Y four months later on March 14, 2011 after E&Y identified issues in the 2009 audit, and stated it could no longer rely on representations of CAGC management.[39]

143. On April 12, 2011, CAGC announced it had hired Simon & Edward LLP as its new independent auditor to replace E&Y.[40] Still, CAGC has not produced audited financial statements for fiscal year 2010.

IV. The SEC has Warned of Reverse Merger Companies Such as CAGC

144. Chinese reverse mergers ("CRMs") have been a magnet for disreputable stock promoters, leading the SEC to issue warnings about investing in companies like CAGC.

145. Shielded by the geographic distance of thousands of miles and operating under a regulatory CRM reverse merger companies have few incentives to provide complete and accurate disclosures to American investors. An August 28, 2010 article in *Barron's* by Bill Alpert and Leslie P. Norton entitled,

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[37] *See* China Agritech, Inc., Current Report, Item 4.01, Ex. 99.1 (Form 8-K) (Apr. 24, 2008).

[38] *See* China Agritech, Inc ., Current Report, Item 4.01, Ex. 99.1 (Form 8-K) (Nov. 17, 2010).

[39] *See* China Agritech, Inc. , Current Report, Items 4.01, 5.02, 8.01, Exs. 16.1, 99.1 (Form 8-K) (Mar. 18, 2011).

[40] *See* China Agritech, Inc ., Current Report, Item 4.01, Ex. 99.1 (Form 8-K) (Apr. 12, 2011).

"Beware This Chinese Export," discusses the enforcement problems that American regulators face when dealing with Chinese companies that trade on U.S. exchanges through CRMs. The article states that "[t]he SEC's enforcement staff can't subpoena evidence of any fraudulent activities in China, and Chinese regulators have little incentive to monitor shares sold only in the U.S."

146. U.S. regulators have finally begun to take notice of the manipulation and fraud endemic in CRMs. The SEC has established a task force to investigate investors' claims regarding the impropriety and fraud of CRMs trading on the U.S. markets. SEC Commissioner Luis A. Aguilar (the "Commissioner") discussed Chinese reverse mergers and the process of "backdoor registration," stating:[41]

> In the world of backdoor registrations to gain entry into the U.S. public market, the use by Chinese companies has raised some unique issues, even compared to mergers by U.S. companies. Two important ones are:
>
> - First, there appear to be **systematic concerns with the quality of the auditing and financial reporting**; and
> - Second, even though these companies are registered here in the U.S., there **are limitations on the ability to enforce the securities laws, and for investors to**

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[41] Luis A. Aguilar, SEC Comm' r, Facilitation Real Capital Formation, Address Before the Council of Institutional Investors Spring Meeting (Apr. 4, 2011) *in* Wash. D.C. *available at* http://www.sec.gov/news/speech/2011/spch040411laa.htm.

> **recover their losses when disclosures are found to be untrue, or even fraudulent.**
>
> **I am worried by the systematic concerns surrounding the quality of the financial reporting by these companies.** In particular, according to a recent report by the staff of the Public Company Accounting Oversight Board (PCAOB), U.S. auditing firms may be issuing audit opinions on the financials, but not engaging in any of their own work. Instead, the U.S. firm may be issuing an opinion based almost entirely on work performed by Chinese audit firms. If this is true, it could appear that the U.S. audit firms are simply selling their name and PCAOB-registered status because they are not engaging in independent activity to confirm that the work they are relying on is of high quality. This is significant for a lot of reasons, including that the PCAOB has been prevented from inspecting audit firms in China.

Id. (emphasis added).

147. On June 9, 2011, the SEC issued an Investor Bulletin on Risks of Investing in Reverse Merger Companies, warning investors about investing in companies that enter U.S. markets through CRM because "...there have been instances of fraud and other abuses involving reverse merger companies." The Bulletin specified that "[g]iven the potential risks, investors should be especially careful when considering investing in the stock of reverse merger companies," said Lori J. Schock, Director of the

SEC's Office of Investor Education and Advocacy.[42]

PLAINTIFFS' CLASS ACTION ALLEGATIONS

148. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a Class consisting of all persons who purchased the common stock of CAGC during the Class Period and who were damaged thereby. Excluded from the Class are Defendants, the present and former officers and directors of CAGC and any subsidiary thereof, members of any defendants' immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

149. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, CAGC's stock was actively traded on the NASDAQ at all times during the Class Period.

150. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are at least hundreds, if not thousands, of members in the proposed Class, particularly given the size of CAGC's public float as set forth in CAGC's public SEC filings, which for example was 13,051,808 on July 16, 2010. Members of the Class may be identified from records maintained by CAGC or its transfer agent and may be notified of the pendency of this action by mail, using a form of notice

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[42] *See* Press Release, SEC, SEC Issues Bulletin on Risks of Investing in Reverse Merger Companies (June 9, 2011) *available at* http://www.sec.gov/news/press/2011/2011-123.htm.

customarily used in securities class actions.

151. Plaintiffs' claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

152. Plaintiffs will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

153. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

a. whether the federal securities laws were violated by Defendants' acts as alleged herein;

b. whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, and financial performance of CAGC; and

c. to what extent the members of the Class have sustained damages and the proper measure of damages.

154. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litiga-

tion make it impossible for members of the Class to redress individually the wrongs done to them. There will be no difficulty in the management of this action as a class action.

RELIANCE IS PRESUMED UNDER FRAUD ON THE MARKET

155. Plaintiffs are permitted a presumption of reliance because CAGC stock was traded in an efficient market during the Class Period. At all relevant times, the market for CAGC common stock was an efficient market for the following reasons, among others:

a. CAGC stock met the requirements for listing, and was listed and actively traded on the on the NASDAQ market (under ticker symbol "CAGC"), a highly efficient and automated market;

b. As stated in the SEC filing DEF 14A dated July 22, 2010, in the section captioned "Security Ownership of Certain Beneficial Owners and Management," on July 16, 2010, there were 20,766,243 shares of Common Stock outstanding. Of these shares, a total of 7,724,435 are attributed to officers and directors. The public float (shares not held by reported insiders) were 13,051,808 at that date;

c. During the class period, the weekly average number shares traded (split-adjusted) was 4.4 million. Approximately 33.7% of the public float, and 21.2% of all outstanding shares, were bought and sold on a

weekly basis, demonstrating a very strong presumption of an efficient market;

d. As a regulated issuer CAGC filed with the SEC periodic public reports and was eligible (and did file) S-3 registration statements with the SEC during the Class Period (February 9, 2010, May 12, 2010, April 16, 2010, and October 19, 2010);

e. CAGC conducted a $23 million offering of shares during the Class Period, which attracted media coverage and investor interest;

f. CAGC regularly communicated with public investors via established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting service;

g. There were more than 2,100 news stories, and analyst reports, and other media coverage regarding CAGC during the Class Period;

h. CAGC was followed by several securities analysts employed by major brokerage firms including Brean Murray, Rodman and Renshaw, LM Research, Bronte Capital, and Chardan Capital (among others), who wrote reports that were distributed to the sales force and certain customers of their respective brokerage firms during the

Class Period. There were at least 125 investment reports published by analysts and others during the Class Period, which disseminated information about CAGC to investors;

i. On average 28 NASD member firms were active market-makers in CAGC stock at all times during the Class Period;

j. Unexpected material news about CAGC was rapidly reflected in and incorporated into the Company's stock price during the Class Period; and

k. There is a strong statistically significant cause and effect relationship between the release of new company specific information and changes in CAGC's stock price. For example:

- On December 23, 2009, CAGC disclosed that it had achieved its 2009 sales target of 80,000 metric tons of organic granular fertilizer. This positive news caused an increase in CAGC's stock price of $2.12/share (adjusted for the two-for-one stock split effective February 10, 2010). The CAGC stock-price increase was statistically significant at the 99% confidence level.

- On February 8, 2010, CAGC released FY10 revenue guidance of approximately $114M vs. consensus estimates of $69.46M. This positive news caused an increase of CAGC's stock price of

$1.20/share (adjusted for the two-for-one stock split effective February 10, 2010). The CAGC stock-price increase was statistically significant at the 95% confidence level.

- On August 12, 2010, CAGC announced earnings per share for the second quarter 2010 that exceeded the analyst consensus estimate. This positive news caused an increase of CAGC's stock price of $2.97/share. The CAGC stock-price increase was statistically significant at the 99% confidence level.
- On September 8, 2010, an analyst at Chardan Capital Markets downgraded shares of CAGC from Neutral to Sell. This negative news caused a decrease of CAGC's stock price of $2.59/share. CAGC's stock-price decrease was statistically significant at the 99% confidence level.
- On November 10, 2010, CAGC announced earnings per share that missed the analyst consensus estimate. This negative news caused CAGC's stock price to decrease $3.26/share. CAGC's stock-price decrease was statistically significant at the 99% confidence level.

AFFILIATED UTE

156. With respect to Defendants' failure to disclose material related party transactions, Plaintiffs are permitted a presumption of reliance under the

U.S. Supreme Court's decision in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972). All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered the omitted related party transactions important in deciding whether to purchase CAGC stock.

157. Here, Plaintiffs need not prove that they relied on Defendants' material omission of the related party transactions in purchasing CAGC stock, because under *Affiliated Ute*, the related party transactions are material facts, and therefore, Plaintiffs are entitled to a presumption of reliance.

FIRST CAUSE OF ACTION

For Violations of Section 10(b) of The Exchange Act and Rule 10b-5 Promulgated Thereunder (On Behalf of Plaintiffs and the Proposed Class and Against All Defendants)

158. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

159. This first cause of action is asserted on behalf of Plaintiffs and the Proposed Class against all Defendants.

160. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to, and throughout the Class Period, did: (1) deceive the investing public, including Plaintiffs and other Class members, as alleged herein; and (2) cause Plaintiffs and other members of the Class to purchase and/or sell CAGC's securities at artificially inflated and distorted prices. In furtherance of

this unlawful scheme, plan and course of conduct, Defendants, individually and as a group, took the actions set forth herein.

161. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of CAGC as specified herein.

162. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of CAGC' s value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about CAGC and its business operations and financial condition in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business that operated as a fraud and deceit upon the purchasers CAGC securities during the Class Period.

163. Each of the Defendants' primary liability, and controlling person liability, arises from the following: (a) defendants were high-level executives, directors, and/or agents at the Company during the Class Period and members of the Company's management team or had control thereof; (b) by virtue of

their responsibilities and activities as senior officers and/or directors of the Company, were privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (c) Defendants enjoyed significant personal contact and familiarity with the other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and (d) Defendants were aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

164. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing CAGC's financial condition from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendants' false and misleading statements during the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by failing to take steps necessary to discover whether those statements were false or misleading.

165. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price for CAGC's securities was artificially in-

flated during the Class Period.

166. In ignorance of the fact that market prices of CAGC's publicly-traded securities were artificially inflated or distorted, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the Company's securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, Plaintiffs and the other members of the Class acquired CAGC's securities during the Class Period at artificially high prices and were damaged thereby.

167. At the time of said misrepresentations and omissions, Plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiffs and the other members of the Class and the marketplace known the truth regarding CAGC's financial results and condition, which were not disclosed by defendants, Plaintiffs and other members of the Class would not have purchased or otherwise acquired CAGC securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices or distorted prices at which they did.

168. By virtue of the foregoing, the Defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

169. As a direct and proximate result of the Defendants' wrongful conduct, Plaintiffs and the other members of the Class suffered damages in connection with their respective purchases and sales of the

Company's securities during the Class Period.

170. This action was filed within two years of discovery of the fraud and within five years of Plaintiffs' purchases of securities giving rise to the cause of action.

SECOND CAUSE OF ACTION

For Violation of Section 20(a) of The Exchange Act (On Behalf of Plaintiffs and the Proposed Class and Against the Individual Defendants)

171. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

172. This Second Claim is asserted against each of the Individual Defendants.

173. The Individual Defendants, acted as controlling persons of CAGC within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, agency, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of aspects of the Company's revenues and earnings and dissemination of information to the investing public, the Individual Defendants had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements that Plaintiffs contend are false and misleading. The Individual Defendants were provided with or had unlimited accessto copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiffs to be misleading prior to

and/or shortly after these statements were issued, and had the ability to prevent the issuance of the statements or to cause the statements to be corrected.

174. In particular, each of these Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

175. As set forth above, CAGC and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint.

176. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act as they culpably participated in the fraud alleged herein. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company's common stock during the Class Period.

177. This action was filed within two years of discovery of the fraud and within five years of Plaintiffs' purchases of securities giving rise to the cause of action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for relief and judgment, as follows:

a. Determining that this action is a proper class action and certifying Plaintiffs as a class representatives under Rule 23 of the Federal Rules of Civil Procedure and Plaintiffs' counsel as Class Counsel;

b. Awarding compensatory damages in favor of Plaintiffs and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

c. Awarding Plaintiffs and the Proposed Class their reasonable attorneys' fees, costs and expenses incurred in this action; and

d. Such other and further relief as the Court may deem just and proper.

Dated: September 4, 2014

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

By: */s/ Betsy C. Manifold*

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JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated: September 4, 2014

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

By: */s/ Betsy C. Manifold*
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APPENDIX D

Dean Amended Complaint

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THEODORE DEAN, SLAVA VANOUS, CLAIR HARPSTER, RANDOLPH DANIELS-KOLIN AND TAN TEE YONG INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, Plaintiffs, vs. CHINA AGRITECH, INC., YU CHANG, YAU-SING TANG, GENE MICHAEL BENNETT, XIAO RONG TENG, MING FANG ZHU, ZHENG "ANNE" WANG, CHARLES LAW, LUN ZHANG DAI, HAI LIN ZHANG, RODMAN & RENSHAW, LLP AND CROWE HORWATH LLP,	CASE No.: 11-CV-01331 (RGK) (PJWx) AMENDED COMPLAINT CLASS ACTION **JURY TRIAL DEMANDED**

Defendants.

1. Plaintiffs Theodore Dean, Slava Various, Clair Harpster, Randolph Daniels-Kolin and Tan Tee Yong ("Plaintiffs") individually and on behalf of all other persons similarly situated, by their undersigned attorneys, allege in this Amended Complaint (the "Complaint") the following upon knowledge with respect to their own acts, and upon facts obtained through an investigation conducted by their counsel, which included, *inter alia*: (a) review and analysis of relevant filings made by China Agritech, Inc. ("CAGC" or the "Company") with the United States Securities and Exchange Commission (the "SEC"); (b) review and analysis of defendants' public documents, conference calls and press releases; (c) review and analysis of securities analysts' reports and advisories concerning the Company; (d) information readily obtainable on the Internet; (e) interviews of several witnesses with personal knowledge of the relevant facts; (f) investigation of Chinese State Administration of Industry and Commerce ("SAIC") filings; (g) investigation of Chinese State Administration of Taxation ("SAT") filings; and (h) investigation and analysis of companies alleged to be suppliers of the Company.

I. NATURE OF THE ACTION

2. This is a class action on behalf of a class consisting of all persons and entities, other than defendants and their affiliates, who purchased the publicly traded common stock of CAGC between November 12, 2009 through March 11, 2011 (the "Class Period"), seeking to recover damages caused by defend-

ants' violations of federal securities laws (the "Class.").

3. This Complaint alleges claims for violations of §10(b) and §20(a) of the Securities Exchange Act of 1934 on behalf of all Class members. No §10(b) or §20(a) claims are asserted against defendants Rodman & Renshaw or Crowe Horwath.

4. This Complaint also alleges claims under §11 and §15 of the Securities Act of 1933 on behalf of all Class members that purchased shares of CAGC in or pursuant to CAGC's secondary public offering of common stock on approximately May 4, 2010 at $16.10/share.

5. CAGC is a holding company. Its business operations are primarily conducted through its direct and indirect subsidiaries in the People's Republic of China ("PRC"). It purports to manufacture and sell organic compound fertilizers and related agricultural products.

6. During the Class Period, CAGC and its officers and directors engaged in a wide-ranging fraud including:

- Overstating revenue by at least 900% for fiscal 2009 and 1,444% for fiscal 2008.
- Reporting $76.13 million of revenue in 2009 and $45.24 million in 2008, when the true revenue figures were not more than $7.6 million in 2009 and $3.0 million in 2008.
- Overstating net income by at least 536% for fiscal 2009. Reporting a profit for fiscal

2008, while the Company was in fact losing money.

- Reporting $6.17 million of net income in 2009 and $9.83 million in 2008, when the true net income figures were not more than $0.97 million in 2009 and a net loss of ($1.88) million in 2008.
- Failing to disclose material related party transactions - CAGC signed a contract effective December 8, 2008 to pay a company controlled by its CEO Chang approximately $4.0 million for raw materials.
- CAGC has maintained two materially different sets of financial accounts, one for investors that it files with the SEC and one for its true business operations that it provides to the Chinese government showing revenue and income only a tiny fraction of that reported to the SEC and investors.

7. During the Class period when CAGC was issuing false and misleading financial statements, Defendants Teng, Tang and Zhu sold over $3.0 million of CAGC stock and CAGC sold over $20.0 million in a public offering.

8. Then on March 14, 2011, CAGC's auditors Ernst & Young Hua Ming ("E & Y") stated that they are not able to rely on management's representations any longer.

9. The same day E &Y's role as auditor was terminated, Nasdaq delisted and halted trading in CAGC's stock "in order to protect the public interest."

10. In the wake of the scandal, two of CAGC's directors and its COO have resigned.

11. As of the date of this amended complaint, CAGC still has not filed its annual report for 2010 on Form10-K with the SEC, which was originally due on April 15, 2011.

12. CAGC's false statements have caused investors substantial losses as its shares have dropped from $10.78/share to $1.55/share as a result of defendants' violations of the securities laws.

II. JURISDICTION AND VENUE

13. The Securities Exchange Act claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. § 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5).

14. The Securities Act claims asserted herein arise under and pursuant to Sections 11, 12(a)(2) and 15 of the Securities Act (15 U.S.C. §§ 77k, 771 and 77(o)).

15. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa), Section 22(a) of the Securities Act, 15 U.S.C. §77v(a), and 28 U.S.C. § 1331.

16. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa), 28 U.S.C. § 1391(b), 28 U.S.C. § 1391(d), and Section 22(a) of the Securities Act (15 U.S.C. §77v(a)).

17. In connection with the acts, conduct and other

wrongs alleged herein, Defendants either directly or indirectly used the means and instrumentalities of interstate commerce, including but not limited to the United States mails, interstate telephone communications and the facilities of the national securities exchange.

III. PARTIES

18. Plaintiffs Theodore Dean, Tan Tee Yong, Slava Vanous, Clair Harpster, and Randolph Daniels-Kolin purchased CAGC common stock during the Class Period and have suffered damages as a result. Tan Tee Yong's PSLRA Certification is attached hereto. The PSLRA Certifications of the other plaintiffs have previously been filed with the Court and are incorporated herein by reference.

19. Defendant CAGC is a Delaware corporation with its principal executive offices located at Room 3F, No. 11 Building, Zhonghong International Business Garden, Future Business Center, Chaoyang North Road, Chaoyang District, Beijing, China 100024. A CAGC subsidiary maintains an office in California.

20. CAGC, through its subsidiaries, purports to manufacture and sell organic compound fertilizers and related agricultural products in the PRC.

21. To have its stock publicly traded in the United States, CAGC employed a device called a "reverse merger" in 2005. In a reverse merger, a publicly traded shell company acquires the private company seeking to go public. In exchange, the shareholders of the former private company receive a controlling share of the public company.

22. As a result of the reverse merger, CAGC became a holding company that primarily operates through its subsidiaries in the PRC.

23. Defendant Yu Chang ("Chang") was and is the Company's CEO, President, Secretary and Chairman of the Board at all relevant times. In addition, Defendant Chang was a substantial shareholder of the Company throughout the Class Period. When the Company filed its 2008 10-K and 2009 10-K, Defendant Chang owned 41.96% and 40.23% of the Company's stock, respectively.

24. Defendant Yau-Sing Tang ("Tang") was and is the Company's CFO and Controller from October 2008 through the present. In addition, Defendant Tang was a shareholder of the Company throughout the Class Period. When the Company filed its 2008 10-K and 2009 10-K, Defendant Tang owned 1.04% and 0.4% of the Company's stock, respectively.

25. Defendant Gene Michael Bennett ("Bennett") was and is a director of CAGC from October 2008 through the present. At all times during the Class Period, Bennett was the chair of CAGC's audit committee, as well as a member of CAGC's Nominating and Governance Committee. After the CAGC Defendants' fraud was disclosed, Bennett was the head of the Company's Special Committee investigating the allegations of fraud.

26. Defendant Xiao Rong Teng ("Teng") was and is a director of CAGC at all relevant times. Teng also served as the Company's COO from February 2005 to March 2009. In addition, Teng was a substantial shareholder of the Company throughout the Class Period. When the Company filed its 2008 10-K and

2009 10K, Teng owned 2.53% and 2.15% of the Company's stock, respectively.

27. Defendant Ming Fang Zhu ("Zhu") was and is CAGC's Chief Operating Officer from March 2009. From April 2007 to March 2009, Zhu served as President of Beijing Agritech Fertilizer Co, Ltd., an indirect subsidiary of the Company.

28. Defendant Lun Zhang Dai ("Dai") was and is a director of CAGC at all relevant times. Dai also serves as a member of the Company's Audit Committee, Compensation Committee and Nominating and Governance Committee.

29. Defendant Hai Lin Zhang ("Zhang") was and is a director of CAGC from October 2008. Zhang also serves as a member of the Company's Audit Committee, Compensation Committee and Nominating and Governance Committee.

30. Defendant Charles Law ("Law") was a director of CAGC from January, 2010. According to the Company's SEC filings, Law is a qualified U.S. attorney who has an understanding of SEC compliance requirements.

31. Defendant Zheng "Anne" Wang ("Wang") was a director of CAGC from December 2009. Wang has been Vice-President of Carlyle Asia Growth Capital, a subsidiary of the Carlyle Group ("Carlyle"), since December 2007. According to the Company's SEC filings, Wang was Carlyle's designee to CAGC's board and was determined by the Board of Directors not to be an "independent director."

32. Chang, Tang, Bennett, Teng, Zhu, Dai, Zhang, Law, Wang are collectively referred to here-

inafter as the "Individual Defendants."

33. Rodman & Renshaw, LLC ("Rodman") is a broker-dealer who served as the underwriter of a secondary public offering of $20.0 million of CAGC stock that was completed on or about May 4, 2010 (the "Offering"). As the underwriter for the Offering Rodman was obligated to conduct due diligence to ensure that CAGC and its business was as presented to investors in the Registration Statement and Prospectus for the Offering. Rodman was negligent in conducting due diligence on CAGC for the Offering.

34. Crowe Horwath LLP ("Crowe") served as CAGC's independent auditors and certified the accuracy of CAGC's financial statements for fiscal years 2008 and 2009. Crowe consented to including its certification of CAGC's financial statements in the Registration Statement and Prospectus for the Offering. Crowe was negligent in certifying CAGC's fiscal 2008 and 2009 financial statements as accurate, and permitting them to be included in the Registration Statement and Prospectus when CAGC's fmancial statements were in fact materially misstated.

35. No allegations of fraud are alleged against Rodman or Crowe. Plaintiffs do not intend any part of this Complaint to allege that Rodman or Crowe acted with fraudulent intent or that they committed fraud.

The Audit Committee

36. According to the Company's audit committee charter, members of the audit committee have the responsibility to, among other things:

a. ".... (a) assists the Board's oversight of (i) the integrity of the Company's financial reporting process and system of internal controls...";

b. "Review and discuss with management and the independent auditors, before filing with the Securities and Exchange Commission, the annual audited financial statements and quarterly financial statements. Review with the independent auditors and management the results of the audit and the Company's specific disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations.- Discuss matters required to be communicated to Audit Committee in accordance with Statement on Auditing Standards No. 61."; and

c. "With the independent auditors, management and the internal auditors, periodically review and discuss significant (a) financial reporting issues and practices, and critical accounting policies and estimates. (b) issues regarding accounting principles and financial statement presentation (including any significant changes in the Company's selection or application of accounting principles). and (c) issues as to the adequacy of the Company's internal control systems and compliance with applicable laws and regulations. Assess management's attitude toward internal controls, the process for establishing and monitoring internal control systems and any

> special audit steps adopted in light of material control deficiencies."

37. According to CAGC's 2009 10-K, the audit committee was comprised of Defendant Bennett, Dai and Zhang, with Bennett serving as the Chairman. Bennett was also determined by the board of directors to be the necessary audit committee member that qualifies as an "audit committee fmancial expert".

38. Defendant Bennett, Dai and Zhang as members of the audit committee had an affirmative duty of oversight and responsibility for the integrity of CAGC's financial reporting.

CAGC's Code of Ethics Acknowledges Related Party Transactions Should be Avoided

39. The Company's Code of Ethics — which CAGC's officers and directors presumably promised to adhere to - prohibits self-dealing transaction such as those engaged in by defendant CEO Chang:

> "The chief executive officer, chief financial officer, comptroller, chief accounting officer or persons performing similar functions (collectively, "Senior Financial Officers") hold an important and elevated role in corporate governance. Senior Financial Officers fulfill this responsibility by prescribing and enforcing the policies and procedures employed in the operation of the enterprise's financial organization, and by demonstrating the following:

> I. Honest and Ethical Conduct Senior Financial Officers will exhibit and promote the highest standards of honest and ethical conduct through the establishment and operation of policies and procedures that:
>
> ***
>
> • **Prohibit and eliminate the appearance or occurrence of conflicts between what is in the best interest of the enterprise and what could result in material personal gain fora member of the financial organization, including Senior Financial Officers."**

[Emphasis added.]

Respondeat Superior Liability

40. CAGC is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency, as all of the wrongful acts complained of herein were carried out within the scope of their employment with authorization.

41. The *scienter* of the Individual Defendants and other employees and agents of the Company is similarly imputed to CAGC under *respondeat superior* and agency principles.

IV. DEFENDANTS' MATERIAL OMMISSIONS AND MISREPRESENTATIONS

A. The 2009 Q3 10-Q is False and Materially Misstated

42. The Class period begins on November 12, 2009 when the Company filed with the SEC its report for the third quarter of 2009 on Form 10-Q ("2009 Q3 10-Q") containing false and misleading financial statements.

43. The false and misleading 10-Q was signed by defendants Chang and Tang. Chang and Tang also signed the accompanying Sarbanes-Oxley ("SOX") certifications, attesting to the accuracy of CAGC's financial statements.

44. The 2009 Q3 10-Q was false because it materially misstated CAGC's revenue and net income for the quarter.

45. According to CAGC's SEC filings, in 2009 CAGC had four operating subsidiaries located in the PRC: Beijing Agritech, Pacific Dragon, Anhui Agritech, and Xinjiang Agritech.

46. Plaintiffs' counsel obtained financial statements filed by the four subsidiaries with both the PRC State Administration for Industry and Commerce ("SAIC")[1] and PRC State Administration of

[1] The SAIC (State Administration for Industry and Commerce) is the Chinese government body that regulates industry and commerce in China. It is primarily responsible for business registrations, issuing and renewing business licenses and acts as the government supervisor of corporations. All Chinese companies are required to file financial statements with the Chinese government annually or bi-annually.

Taxation ("SAT")[2].

47. The consolidated financials reported by CAGC with the SAIC and SAT for *entire fiscal year* 2009 are substantially similar to each other, and both report revenue and income that are substantially less than the revenue and income CAGC reported in the 2009 Q3 10-Q with the SEC.

(In USD Million)	SEC Nine Month Ended Sept. 30, 2009	SAIC for Entire fiscal Year 2009	SAT for Entire fiscal Year 2009
Net Revenue	$55.38	$7.02	$7.59
Net Income	$12.83	$0.97	$0.93

48. The financial statements filed by CAGC with the two PRC government authorities indicate the true financial performance of the Company because.

- Under PRC law, penalties for filing false SAIC filings include fines and revocation of the entity's business license.[3]
- If an entity's business license is revoked, the People's Bank of China[4] requires all bank accounts of that entity be closed.[5]

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[2] The SAT (State Administration of Taxation) is PRC equivalent of the Internal Revenue Service in the U.S.

[3] "Measures for the Annual Inspection of Enterprises" issued on February 24, 2006, Article 20.

[4] People's Bank of China in PRC is equivalent to the Federal Reserve in the U.S.

- Without a business license the entity cannot legally conduct any business.
- Under PRC law, filing false tax documents is a crime subject to severe criminal and civil penalties, including imprisonment.[6]
- The financial statements CAGC filed in the PRC with the SAIC are all audited by CPA firms.[7]

49. Therefore, CAGC's 2009 Q3 10-Q is false and materially misleading.

B. CAGC's 2009 10-K is False and Materially Misstated

50. On April 1, 2010, the Company issued its fiscal 2009 annual report on form 10-K ("2009 10-K") containing false and misleading financial statements for fiscal years 2008 and 2009.

51. The false and misleading 2009 10-K was signed by defendants Chang, Tang, Teng, Bennett, Dai, Zhang, Law and Wang. Defendants Chang and Tang signed the accompanying SOX certifications,

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[5] "Measures for the Administration of RMB Bank Settlement Accounts" issued in April 2003. (No.5 [2003]), Article 49.

[6] Article 201 of the Criminal Law of PRC; Article 63 of the Law of PRC Concerning the Administration of Tax Collection.

[7] Beijing Agritech's 2008 and 2009 financial statements are audited by Beijing Zhonghui Xincheng CPA Firm. Pacific Dragon's 2008 and 2009 financial statements are audited by Heilongjiang Huaxin CPA Firm. Xinjiang Agritech's 2008 and 2009 financial statements are audited by Xinjiang Runtong CPA Firm. Anhui Agritech's 2008 and 2009 financial statements are audited by Bengbu Tianyi CPA Firm.

attesting to the accuracy of CAGC's financial statements.

52. The 2009 10-K was false and materially misstated because: i) It materially misstated the Company's revenue and net income for fiscal year 2008 and 2009; and ii) It concealed material related party transactions.

1. CAGC Kept Two Materially Different Sets of Books: The Financial Statements CAGC Filed with Chinese Authorities Report a Tiny Fraction of the Revenue and Income contained in the Financial Statements CAGC Filed with the SEC

53. The revenue and net income reported by CAGC with the PRC SAIC and SAT for fiscal 2008 and 2009 are substantially less than those reported by CAGC with the SEC.

54. For fiscal 2008, the Company reported $45.24 million net revenue and $9.83 net income to the SEC. However, the revenue it reported to the PRC SAIC and SAT was no more than $3 million, with a net loss of more than ($1.88) million.

55. CAGC overstated revenue by at least 1,444% for fiscal 2008. It fabricated a profitable fiscal year for 2008 while the Company was in fact losing money.

(In USD million)	SEC 2008	SAIC 2008	SAT 2008	Amount of Overstatement from SAIC to SEC	SAIC Amount as % of SEC

Net Revenue	$45.24	$2.93	$2.4	$42.31	$6.48%
Net Income	$9.83	($1.88)	($2.03)	$11.71	n/a

56. For fiscal 2009, the Company reported $76.13 million net revenue and $6.17 net income to the SEC. However, CAGC reported revenue to the PRC SAIC and SAT that was no than $7.6 million, with net income of less than $1 million.

57. CAGC overstated revenue by at least 900% and overstated net income by at least 536% for fiscal 2009.

(In USD million)	SEC 2009	SAIC 2009	SAT 2009	Amount of Overstatement from SAIC to SEC	SAIC Amount as % of SEC
Net Revenue	$76.13	$7.02	$7.59	$69.11	9.22%
Net Income	$6.17	$0.97	$0.93	$5.2	15.72%

58. CAGC's fraudulent revenue reporting has also been verified by Plaintiff's investigators' site visits to CAGC's factories.

59. According to Plaintiffs' investigator, CAGC subsidiary Beijing Agritech is an idle factory with no significant operation.[8]

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[8] Though CAGC did not disclose in its SEC filings about annual production of Beijing Agritech, it did confirm in its February 10, 2011 Letter to Shareholders that the factory in Beijing is fully operational.

- Plaintiffs' investigators visited Beijing Agritech's factory in Pinggu, Beijing on a weekday in early June, 2011. The investigators found no evidence of operations at the factory. The door was locked. They did not see any movement of workers or machines through the window. There were no trucks or vehicles entering or exiting.
- When the investigators inquired to the gatekeepers about meeting with or talking to the sales department, they were refused entry to the factory. Nor would the gatekeepers provide any contact information for factory management. The two gatekeepers said currently no officer or manager was in the factory and no one was expected in the factory for another month and that the gatekeepers were currently the only persons in charge of the whole factory.
- The investigators also visited the local government department that supervises and regulates CAGC's (and that factory's) business. The department is known as the Administrative Committee of Beijing Xinggu Economic Development Zone. This is the government administrative organ that has responsibility for overall management of the economic zone in which CAGC's factory resides.[9] Plaintiffs'

[9] The Administrative Committee's duties include, but are not limited to, planning and overseeing the economic zone's construction and development, investment and business start-ups, coordination between the various departments for serving the business development, and daily supervision of enterprises that are operating in the zone. Thus the committee usually

investigator interviewed Mr. Yin, the director of Investment Invitation Section I under the Administrative Committee, and was told by him that Beijing Agritech rarely has any production. Its gate is locked all the time. The management has refused the Administrative Committee's several requests for routine site visits. Mr. Yin was also told by Beijing Agritech that this factory was not in operation.

60. For Anhui Agritech, CAGC released more than 10 pictures inside the factory in February 2011, in an effort to rebut the negative facts in the LM Report. Those pictures, however, show that the company did not have basic equipment, such as forklifts, necessary for operations. One picture showed that human laborers were used to move the 40kg (88lb.) fertilizer bags manually. Since this factory was reported to manufacture 100,000 tons of granular fertilizer annually, it means 37 workers have to move 2.5 million bags weighing 40kg each year (185 bags/day per person assuming they work 365 days a year), an impossible method of operation.[10]

61. As to Xinjiang Agritech, it was not incorporated until December 2008. According to LM Report, the Xinjiang Agritech plant is actually a warehouse, shared with two other companies and demonstrates no activity.

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keeps the most comprehensive information of all enterprises operating in the zone.

[10] An educated estimate based on CAGC's total employees and production capacity of each subsidiary. This assumes a bag is moved only once following production.

62. In summary, CAGC materially overstated it production.

63. In addition, financial statements filed by CAGC subsidiary Pacific Dragon with local SAIC show its revenue for 2008 and 2009 was only $76,811 and $85,294, respectively, far less than the purported annual rent stated in SEC filed financial statements in $518,940.

64. It is a common sense that no company would spend six times its revenue for rent expenses.

65. Similarly, the financial statements filed by CAGC subsidiary Anhui Agritech with the local SAIC show its revenue for 2009 was only $77,941, far less than the purported annual rent of $432,900 reported in CAGC's SEC filings.

66. As shown by the discrepancy between the PRC SAIC revenue, income and expenses, CAGC has been keeping two materially different sets of books, one for the PRC authorities and one for the SEC.

2. Related Party Transactions

67. The 2009 10-K was false and misleading also because it concealed related party transactions with CAGC's CEO Chang.

68. CAGC's third largest supplier - Shenzhen Hongchou Technology Company Ltd. ("Shenzhen Hongchou") was 90% owned by CAGC CEO, President, Secretary and Chairman of the Board Defendant Chang at all relevant times until at least January 5, 2011, when he claims to have transferred his

shares to another individual Haibo Li.[11]

69. Generally Accepted Accounting Principles ("GAAP"), Statement of Financial Accounting Standards ("SFAS") and SEC regulations required the Company to disclose all material related party transactions.

70. Statement of Financial Accounting Standards ("SFAS") No. 57 and No. 850 provide that a public company's "[financial statements shall include disclosures of material related party transactions." SFAS No. 57 ¶ 2; 850-10-50-1.

71. "Related party transactions" include those between "an enterprise and its principal owners, management, or members of their immediate families" and those between a company and its "affiliates." SFAS No. 57 ¶ 1; 850-10-05-3. "Affiliate" includes any company that is under common control or management with the public company. SFAS No. 57 ¶ 24(a, b); 850-10-20.

72. Disclosures of related party transactions shall include (a) the nature of the relationship involved, (b) a description of the transactions for each period for which income statements are presented and such other information necessary to an understanding of the effects of the transactions on the financial statements, (c) the dollar amount of transactions for each of the periods for which income statements are presented, and (d) amounts due from or to related

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[11] Perhaps not coincidentally, Ms. Haibo Li's mother is the owner of Harbin Hai Heng Chemical Dist. Co., another principal supplier to CAGC (supplying 17% of CAGC's raw materials).

parties as of the date of each balance sheet presented and, if not otherwise apparent, the terms and manner of settlement. SFAS No. 57 ¶ 2; 850-10-50-1.

73. In its May 14, 2009 10-Q, CAGC attached a contract dated December 8, 2009 between CAGC's subsidiary Pacific Dragon Fertilizer Co., Ltd. and Shenzhen Hongchou in which CAGC's subsidiary promised to purchase 26.9 million RMB ($4.0 million) of raw materials from Shenzhen Hongchou.[12]

74. According to the 2009 10-K, CAGC purchased 15% and 12% of its raw materials from Shenzhen Hongchou in fiscal 2009 and 2008.

75. CAGC, however, did not disclose that 90% of Shenzhen Hongchou's shares were owned by CAGC CEO, President, Secretary and Chairman defendant Chang and that the above purchases were related party transactions.

76. Shenzhen Hongchou's SAIC filings show that Chang has owned 90% of its shares since August, 2004, while Ms. Haibo Li owned the remaining 10%.

77. In addition, Haibo Li's sister is a branch manager for Pacfic Dragon, the CAGC subsidiary that signed the related party contract with Shenzhen Hongchou.

78. The SAIC filings also show that Shenzhen Hongchou's annual revenue was only $4,822.00 (RMB 33,269.23) in fiscal 2008, substantially less than CAGC' s purported purchases from it.

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[12] The contract is attached and incorporated by reference herein.

79. Notably, CAGC reported in the 2009 10-K that "We purchase the majority of our raw materials from suppliers located in the PRC and use suppliers that are located in close proximity to our manufacturing facilities, which helps us to contain our cost of revenue." Shenzhen Hongchou, however, is not close to Pacific Dragon Fertilizer Co., Ltd. or to any of CAGC's subsidiaries. The closest CAGC subsidiary to Shenzhen Hongchou is Anhui Agritech, which is more than 1,300 km (808 miles) away. Pacific Dragon is more than 3,000 km (1,864 miles) from Shenzhen Hongchou.

80. The only reason for CAGC to choose Shenzhen Hongchou as its major supplier is to personally benefit CEO, President, Secretary and Chairman of the Board defendant Chang.

3. CAGC's Other Suppliers Raise Serious Questions

81. According to CAGC's 2009 10-K, Beijing Zhongxin Chemical Technology Development Co., ("Beijing Zhongxin") was its largest supplier. CAGC purchased 18% and 33% of its raw materials from it in fiscal years 2009 and 2008, respectively. On December 2, 2008, CAGC's subsidiary Pacific Dragon Fertilizer Co., Ltd. signed a contract to purchase 59.6 million RMB ($8.7 million) of raw materials (fulvic acid) from Beijing Zhongxin.[13]

- After extensive government database searches and website searches in all possible transliterated Chinese names, Plaintiffs' counsel's in-

[13] The contract is attached and incorporated by reference herein.

vestigator could not find such company.[14] Plaintiffs believe Beijing Zhongxin does not exist or if it does exist in some form, it is a non-operational shell company.

- If Beijing Zhongxin does exist, it should be an important and well-known player in the market for fertilizer raw materials since it has millions of dollars in annual sales. It is unlikely that CAGC is its only customer. Yet, when Plaintiffs counsel's investigator interviewed managers at Beijing Dahua Fertilizer Co., Ltd. and Beijing Aojia Fertilizer Co., Ltd., two well-known fertilizer manufacturers in Beijing, they stated that they are quite familiar with the industry, but neither of them has ever heard of Beijing Zhongxin.

- Therefore, Plaintiffs' investigator believes that Beijing Zhongxin does not exist and may be a front to siphon funds from CAGC.

82. According to CAGC's 2009 10-K, Harbin Hai Heng Chemical Distribution Co., Ltd., ("Harbin Hai Heng") was its second largest supplier. On December 5, 2008, CAGC's Pacific Dragon subsidiary signed a

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[14] LM Report also questioned CAGC's mysterious suppliers because those companies "cannot be found in any directory under possible Chinese names that would correspond to the transliterated names or under the alphabetic names." However, in its response, CAGC still did not disclose the suppliers' Chinese names. It only referred to the link of its SEC filings where only English names were disclosed. It appears defendants did not disclose the Chinese names because one of the suppliers was owned by CEO/Chairman/President Chang and he did not want to be discovered, while the other supplier does not exist.

contract with Harbin Hai Heng to purchase 43.4 million RMB ($6.0 million) of raw materials from Harbin Hai Heng.[15] CAGC purchased 17% and 12% of raw materials from Harbin Hai Heng in fiscal 2009 and 2008, respectively.

- However, Harbin Hai Heng's PRC SAIC records show that this company did not participate in the mandatory annual inspection for fiscal year 2008 and 2009, implying that it has been a non-active business since 2007. Failing to file the annual inspection will not only bring substantial penalties, but also the risk of revocation of the entity's business license.[16] Without a business license, a company cannot conduct any business in the PRC or even maintain a bank account.
- Harbin Hai Heng is a shell company. According to a credit report issued by Qingdao Intercredit, a reputable credit reporting agency in China, Harbin Hai Heng has no known phone number, no website, no information obtainable online and no determinable business operations. These facts have also been verified by Plaintiffs' investigator through extensive database searches.
- Furthermore, Harbin Hai Heng is owned by Guirong Yin who is the mother of Ms. Haibo Li, Chang's business partner in Shenzhen

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[15] The contract is attached and incorporated by reference herein.

[16] PRC "Measures for the Annual Inspection of Enterprises" issued on February 24, 2006, Article 19.

Hongchou, the third largest supplier of CAGC -- which was 90% owned by Chang until January 2011 when Chang transferred his 90% interest to Haibo Li. Haibo Li's sister is a branch manager for CAGC subsidiary Pacific Dragon which signed the $4.0 million contract with Shenzhen Hongchou. Defendant CEO Chang's full relationship with the Li family is not yet known, but it is clearly deep.

83. According to CAGC's 2009 10-K, Langfang Tong Chuang Industrial and Trading Company Ltd ("Langfang Tong Chuang") was its fourth largest supplier. CAGC purchased 13% and 11% of its raw materials in 2009 and 2008 year, respectively.

- Langfang Tong Chuang's PRC SAIC records show that this company's business scope is limited to "sales of paper, daily grocery, iron powder, construction materials, steel, auto parts, and plastic products and machining." None of CAGC's reported purchases of nitrogen, phosphorus and kalium or any similar chemical material is included within the scope of allowable business operations.

- According to PRC regulations, a company's registered business scope is determined by its Articles and monitored by local authorities. A company is not allowed to conduct any business beyond the registered scope without amendment to its Articles and SAIC registra-

tion, unless specifically approved by the SAIC.[17]

- Langfang Tong Chuang's SAIC records do not show any approval for the manufacture, sale or distribution of raw materials for fertilizer.
- Furthermore, its SAIC filings show that the company's revenue was $208,370 and $216,350 for the fiscal year 2009 and 2008, respectively,[18] substantially less than CAGC's purported purchase from it.

84. There is no plausible legitimate business explanation for CAGC's payments to Beijing Zhongxin, Harbin Hai Heng and Langfang Tong Chuang as these three purported suppliers clearly did not provide raw materials to CAGC in the amounts reported by CAGC.

85. Furthermore, because operating capital is very scarce in China, it is not the general business practice to provide suppliers with large cash advances. Yet, CAGC made huge cash advances to its suppliers for the future purchase of raw materials. As of December 31, 2009 and 2008, total cash advances made to the four suppliers amounted to $25.35 million and $10.8 million, respectively.

V. CAGC'S STOCK PRICE DROPPED AS INVESTORS SLOWLY LEARNED THAT

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[17] Company Law of the People's Republic of China, Article 11.

[18] Exchange rate for 2008 is RMB 6.9 : USD 1, for 2009 is RMB 6.8 : USD 1.

CAGC'S FINANCIAL STATEMENTS WERE INACCURATE

A. The LM Report And Its Aftermath

86. On February 3, 2011, the research firm LM Research published a report asserting that China Agritech was a fraud.

87. The Report, asserted that the Company's financial statements were fraudulent. It alleged revenue was overstated and that the company's factory plants are idle.

88. The adverse news disclosed by the LM Report caused the Company's stock to decline from its closing price of $10.78/share on February 2, 2011 to $9.12/share before closing at $9.85/share on February 3, 2011 — a day over day decline of 8.63%.

89. The next day, CAGC vigorously denied the allegations made in the LM report. The response only helped recovery of the stock price by $0.14/share or 1%. Ironically, Charles Law, one of CAGC's Board of Directors, resigned on that day.

90. CAGC continued to deny the allegations of fraud publicly. Yet, as a result of the allegations of fraud, several analyst firms downgraded CAGC, causing a selloff and declines in its share price.

91. On February 7, 2011, analyst firm Brean Murray downgraded CAGC. Also on February 7, 2011, YQV downgraded CAGC to hold and Rodman & Renshaw placed CAGC's rating under review as a result of the allegations of fraud in the LM Report.

92. On February 8, 2011, analyst firm Chardan lowered its price target for CAGC from $8 to $5. And

based on a lack of credibility in management rated CAGC a sell.

B. The Bronte Report And Its Aftermath

93. On February 15, 2011 Bronte Capital issued a scathing report presenting additional facts indicating that CAGC was a fraud and could not possibly have produced the revenue it claimed in its financial statements.

94. As a result of the Bronte Capital report, CAGC stock price dropped from $9.21/share on February 5, 2011 to $7.44/share on February 16, 2011 — more than 19% - on extremely heavy volume.

C. E & Y's Can No Longer Trust Management and Nasdaq Halts Trading in CAGC Stock

95. A month later, on March 13, 2011, CAGC announced formation of a Special Committee of its Board of Directors ("the Special Committee") to investigate the allegations of fraud made by third parties.

96. The next day CAGC dismissed Ernst & Young Hua Ming as the Company's independent auditor citing the following reasons as disclosed in the 8-K filed on March 13, 2011:

> "On November 13, 2010, China Agritech, Inc. (the "Company") appointed Ernst & Young Hua Ming ("E&Y") as its independent registered public accounting firm. On March 14, 2011, the Company terminated the services of E&Y.

...On December 15, 2010, E&Y provided a letter to the Audit Committee of the Board of Directors of the Company (the "Audit Committee") describing certain matters that, if not appropriately addressed in a timely manner, may result in audit adjustments, significant deficiencies or material weaknesses and/or delays in meeting the 10-K filing deadline. ... On March 8, 2011, E&Y informed the Audit Committee that it had encountered additional issues and concerns that, in E&Y's view, required additional information and procedures, **including the initiation of an independent investigation, in order to verify certain transactions and balances recorded on the Company's financial statements and records for the year ended December 31, 2010. E&Y also orally advised the Audit Committee that it may not be able to rely on management's representations based on the issues identified.**

E&Y informed the Company that the issues identified in performing their audit may, if further investigated, have adverse implications for the financial statements covering the three quarterly reports filed by the

> **Company on Form 10-Q during 2010,** and advised the Audit Committee to inform the predecessor auditors of the issues identified, so that they can assess the impact on prior financial reports."

[Emphasis added]

97. Thus, CAGC had concealed that E &Y had identified serious problems with its financial statements as early as December 15, 2010 and had informed CAGC's board that an internal investigation was necessary.[19] CAGC had misled investors to believe that the investigation was not connected at all with E&Y's audit and concealed that E &Y had demanded the internal investigation as a result of serious issues with CAGC's financial statements. But CAGC failed to correct the problems with the financial statements, failed to provide verification for certain transactions — prompting **"E&Y ... orally advise[] the Audit Committee that it may not be able to rely on management's representations based on the issues identified."**

98. Thus, the March 14, 2011 press release shocked investors by disclosing that Defendants had concealed that E&Y had insisted that the board commence an investigation and that Defendants had concealed that the failure of CAGC to file its 10-K timely was a result of accounting problems that E& Y had indentified back in December 2010 —leading

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[19] After retaining a law firm and accounting firm to conduct the investigation for more than four months, CAGC has still not disclosed the results of the investigation.

to the investigation. Thus, investors learned for the first time that E& Y had identified problems with CAGC's financial statements. This news crushed any remaining credibility CAGC management had because E&Y stated it could not rely on management's representations.

99. Also on March 14, 2011, the Nasdaq delisted and halted trading in CAGC stock with its share price at $6.88/share.

100. Then, Defendant Wang, a member of the Company's Board of Directors, as well as a member of the special committee of the Board of Directors, resigned without a word.

101. On May 20, 2011, CAGC stock opened for trading on the pink sheets at $1.50/share having dropped $5.38/share from its previous pre-halt trading price. CAGC shares traded as low as $1.00/share before closing for trading at $3.80/share. The next trading day, CAGC shares dropped another $0.80/share to $3.00/share on heavy trading.

102. The share price decline on May 20 and 23 was a direct result of the negative news concerning E&Y disclosed on March14, 2011 and the resignation of defendant Wang as a director, who had served as a representative of Carlyle —further eliminating any credibility for CAGC.

103. CAGC shares currently are valued at $1.55/share as of June 21, 2011.

104. Thus investors have seen the value of their shares drop from $10.78/share on February 2, 2011 when the fraud was first disclosed to $1.55/share as of June 21, 2011 — a loss of $9.23/share.

VI. ADDITIONAL FACTS SUGGESTIVE OF SCIENTER

A. Defendants' Stock Sales Demonstrate Scienter

105. Defendants have also profited handsomely from sales of CAGC stock. This demonstrates that defendants had a strong profit motive to inflate the stock price by overstating its financials.

106. CAGC filed a prospectus with the SEC on May 4, 2010 registering for sale large amounts of CAGC stock owned by Defendants. While it is not clear exactly how much stock each defendants sold pursuant to the Registration Statement, Defendants were each motivated, and intended, to sell CAGC stock and earn tens of millions in profits.

107. Scienter is also supported by fact that CAGC was able to conduct an equity offering to take advantage of CAGC stock's artificially inflated price. In May, 2010, CAGC sold over 1.243 million shares of its stock at $16.10/share raising approximately $21 million; along with the exercise of warrants, CAGC raised an additional $10 million.

108. Defendants Teng, Tang and Zhu all profited handsomely from sales of CAGC stock during the period of the fraud. A list of their specific CAGC share sales are as follows.

Name	Position	Date	Amount	Proceeds
Xiaorong Teng	Director/COO	13-May-10	10,000	$169,400
		26-May-10	10,000	$127,846
		01-Jun-10	7,200	$92,835
		23-Jul-10	31,900	$384,921

		26-Jul-10	20,000	$251,064
		10-Feb-11	100	$1,294
		11-Feb-11	11,668	$151,149
		12-Feb-11	8,232	$106,856
			TOTAL	**$1,285,384**
Yau-Sing Tang	CFO	12-May-11	10,000	$153,000
		13-May-11	5,000	$83,000
		07-Jun-10	5,000	$56,920
		02-Aug-10	10,000	$130,000
		03-Aug-10	10,000	$140,334
		06-Aug-10	10,000	$150,544
		29-Dec-10	5,000	$82,500
		30-Dec-10	5,000	$85,000
		06-Jan-10	5,000	$87,500
			TOTAL	**$908,798**
Mingfang Zhu	COO	18-May-10	1,900	$29,640
		19-May-10	28,100	$363,033
		27-May-10	20,000	$260,208
		04-Jun-10	20,000	$240,290
			TOTAL	**$893,172**

B. CAGC's Misconduct Was So Serious that NASDAQ Delisted the Company's Securities from Trading

109. CAGC's misconduct was evidently serious enough that on April 12, 2011, it received a letter

from NASDAQ stating that:[20]

- "the staff of Nasdaq believes that the continued listing of the Company's securities on Nasdaq is no longer warranted based on public interest concerns and the Company's failure to file its 2010 Form 10-K on time (the "Nasdaq Letter").
- "the staff of Nasdaq believes that the serious concerns raised by our former auditors, Ernst & Young Hum Ming ("E&Y"), relating to issues surfacing in the audit process rise to the level of a public interest concern, ...

C. The Revolving Door for CAGC's Auditors

110. CAGC has changed auditors four times in three years. Since 2008, the Company has had four independent auditors.

111. Kabani & company, Inc., ("Kabani") a Los Angeles-based accountancy, audited the Company's 2007 financials. Kabani was the accountancy that audited the notoriously fraudulent Bodisen Biotech, an organic fertilizer company that was delisted in 2007, and China Green Agriculture (CGA), a firm which was also disclosed having falsely reported its results to U.S. investors.

112. In April 2008, CAGC terminated Kabani and retained Crowe Horwath LLP as its auditor. CAGC then terminated Crowe Horwath and retained E&Y in November, 2010.

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[20] CAGC disclosed the letter in its 8-K filed with the SEC on April 18, 2011.

113. However, CAGC fired E&Y four months later due after E&Y identified issues in the 2009 audit, and stated it could no longer rely on representations of CAGC management.

114. On April 12, 2011, CAGC announced it had hired Simon & Edward LLP as its new independent auditor to replace E & Y. Still, CAGC has not produced audited financial statements for fiscal year 2010.

D. The SEC has Warned of Reverse Merger Companies Such as CAGC

a. Chinese reverse mergers have been a magnet for disreputable stock promoters, leading the SEC to issue warnings about investing in companies like CAGC.

b. Shielded by the geographic distance of thousands of miles and operating under a regulatory framework that is a world apart from the SEC's oversight, RCM companies have few incentives to provide complete and accurate disclosures to American investors. An August 28, 2010 article in *Barron's* by Bill Alpert and Leslie P. Norton entitled, "Beware This Chinese Export," discusses the enforcement problems that American regulators face when dealing with Chinese companies that trade on U.S. exchanges through RCMs. The article states that "[t]he SEC's enforcement staff can't subpoena evidence of any fraudulent activities in China, and Chinese regulators have little incentive to monitor shares sold only in the U.S."

c. U.S. regulators have finally begun to take notice of the manipulation and fraud endemic in RCMs.

The SEC has recently established a task force to investigate investors' claims regarding the impropriety and fraud of RCMs trading on the U.S. markets. SEC Commissioner Luis A. Aguilar (the "Commissioner") discussed Chinese reverse mergers and the process of "backdoor registration," stating:[21]

> In the world of backdoor registrations to gain entry into the U.S. public market, the use by Chinese companies has raised some unique issues, even compared to mergers by U.S. companies. Two important ones are:
>
> - First, there appear to be **systematic concerns with the quality of the auditing and financial reporting**; and
> - Second, even though these companies are registered here in the U.S., there **are limitations on the ability to enforce the securities laws, and for investors to recover their losses when disclosures are found to be untrue, or even fraudulent**.
>
> **I am worried by the systematic concerns surrounding the quality of the financial reporting by these companies**. In particular, according to a recent report by the staff of the Public Company Accounting Oversight Board (PCAOB), U.S. auditing firms may be issuing audit opinions on the financials, but not engaging in any of their own work. Instead, the U.S. firm may be issuing an opinion based almost entirely on

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[21] Text of the entire speech is available at http://sec.gov/news/speech/2011/spch040411laa.htm#P79_43025.

work performed by Chinese audit firms. If this is true, it could appear that the U.S. audit firms are simply selling their name and PCAOB-registered status because they are not engaging in independent activity to confirm that the work they are relying on is of high quality. This is significant for a lot of reasons, including that the PCAOB has been prevented from inspecting audit firms in China.

d. On June 9, 2011, the SEC issued an Investor Bulletin warning investors about investing in companies that enter U.S. markets through RCM "... there have been instances of fraud and other abuses involving reverse merger companies." "Given the potential risks, investors should be especially careful when considering investing in the stock of reverse merger companies," said Lori J. Schock, Director of the SEC's Office of Investor Education and Advocacy.

VII. PLAINTIFFS' CLASS ACTION ALLEGATIONS

115. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a Class consisting of all persons who purchased the common stock of CAGC during the Class Period and who were damaged thereby. Excluded from the Class are Defendants, the present and former officers and directors of CAGC and any subsidiary thereof, members of any defendants' immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

116. The members of the Class are so numerous

that joinder of all members is impracticable. Throughout the Class Period, CAGC's stock was actively traded on the NASDAQ at all times during the Class Period.

117. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are at least hundreds, if not thousands, of members in the proposed Class. Members of the Class may be identified from records maintained by CAGC or its transfer agent and may be notified of the pendency of this action by mail, using a form of notice customarily used in securities class actions.

118. Plaintiffs' claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

119. Plaintiffs will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

120. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

a. whether the federal securities laws were violated by Defendants' acts as alleged herein;

b. whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, and financial performance of CAGC; and

c. to what extent the members of the Class have sustained damages and the proper measure of damages.

121. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to redress individually the wrongs done to them. There will be no difficulty in the management of this action as a class action.

VIII. RELIANCE PRESUMPTION

122. At all relevant times, the market for CAGC common stock was an efficient market for the following reasons, among others:

a. CAGC stock met the requirements for listing, and was listed and actively traded on the on the NASDAQ market (under ticker symbol "CAGC"), a highly efficient and automated market;

b. On average there were 18.8 million shares of the Company's common stock issued and outstanding during the Class Period. The public float (shares not held by insid-

ers/defendants) was 10.5 million shares on average during the Class Period;

c. During the class period, on average, 4.4 million shares of CAGC common stock were traded on a weekly basis. Approximately 42.5% of the public float, and 23.5% of all outstanding shares, were bought and sold on a weekly basis, demonstrating a very strong presumption of an efficient market;

d. As a regulated issuer CAGC filed with the SEC periodic public reports and was eligible (and did file) S-3 registration statements with the SEC during the Class Period;

e. CAGC regularly communicated with public investors via established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;

f. CAGC was followed by several securities analysts employed by major brokerage firms including Brean Murray, Rodman and Renshaw and Chardan (among others), who wrote reports that were distributed to the sales force and certain customers of their respective brokerage firms during the Class Period;

g. At least 75 NASD member firms were active market-makers in CAGC stock at all times during the Class Period; and

h. Unexpected material news about CAGC was rapidly reflected in and incorporated into the Company's stock price during the Class Period.

IX. FIRST CAUSE OF ACTION

Violation of Section 10(b) of The Exchange Act Against and Rule 10b-5 Promulgated Thereunder Against All Defendants But Excluding Rodman & Renshaw and Crowe Horwath

123. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

124. This cause of action is asserted against all Defendants, except it specifically excludes Rodman & Renshaw and Crowe Horwath.

125. During the Class Period, defendants carried out a plan, scheme and course of conduct which was intended to, and throughout the Class Period, did: (1) deceive the investing public, including Plaintiffs and other Class members, as alleged herein; and (2) cause Plaintiffs and other members of the Class to purchase and/or sell CAGC's securities at artificially inflated and distorted prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, individually and as a group, took the actions set forth herein.

126. Defendants, individually and in concert, directly and indirectly, by the use, means or instru-

mentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of CAGC as specified herein.

127. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of CAGC's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about CAGC and its business operations and financial condition in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business that operated as a fraud and deceit upon the purchasers CAGC securities during the Class Period.

128. Each of the defendants' primary liability, and controlling person liability, arises from the following: (a) defendants were high-level executives, directors, and/or agents at the Company during the Class Period and members of the Company's management team or had control thereof; (b) by virtue of their responsibilities and activities as senior officers and/or directors of the Company, were privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (c) defendants enjoyed significant personal contact and familiarity with the other

members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and (d) defendants were aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

129. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing CAGC's financial condition from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants' false and misleading statements during the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by failing to take steps necessary to discover whether those statements were false or misleading.

130. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price for CAGC's securities was artificially inflated during the Class Period.

131. In ignorance of the fact that market prices of CAGC's publicly-traded securities were artificially inflated or distorted, and relying directly or indirectly on the false and misleading statements made by

defendants, or upon the integrity of the market in which the Company's securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, Plaintiffs and the other members of the Class acquired CAGC's securities during the Class Period at artificially high prices and were damaged thereby.

132. At the time of said misrepresentations and omissions, Plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiffs and the other members of the Class and the marketplace known the truth regarding CAGC's financial results and condition, which were not disclosed by defendants, Plaintiffs and other members of the Class would not have purchased or otherwise acquired CAGC securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices or distorted prices at which they did.

133. By virtue of the foregoing, the defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

134. As a direct and proximate result of the Defendants' wrongful conduct, Plaintiffs and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

135. This action was filed within two years of discovery of the fraud and within five years of Plaintiffs' purchases of securities giving rise to the cause of action.

X. SECOND CAUSE OF ACTION

Violation of Section 20(a) of The Exchange Act Against the Individual Defendants

136. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

137. This Second Claim is asserted against each of the Individual Defendants, and it specifically excludes Rodman & Renshaw and Crowe Horwath.

138. The Individual Defendants, acted as controlling persons of CAGC within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, agency, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of aspects of the Company's revenues and earnings and dissemination of information to the investing public, the Individual Defendants had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements that Plaintiffs contend are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiffs to be misleading prior to and/or shortly after these statements were issued, and had the ability to prevent the issuance of the statements or to cause the statements to be corrected.

139. In particular, each of these Defendants had direct and supervisory involvement in the day-to-day

operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

140. As set forth above, CAGC and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint.

141. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act as they culpably participated in the fraud alleged herein. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company's common stock during the Class Period.

142. This action was filed within two years of discovery of the fraud and within five years of Plaintiffs' purchases of securities giving rise to the cause of action.

XI. THIRD CAUSE OF ACTION

Violation of §11 of the Securities Act Against All Defendants

143. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein. This claim is not based on, and does not allege, fraud.

144. This §11 claim is asserted against all Defendants.

145. This claim is brought by Plaintiff Tan Tee Yong on his own behalf and on behalf of other members of the Class who acquired CAGC stock pursuant to or traceable to CAGC's Offering completed on and about May 4, 2010.

146. Each Class Member acquired his, her, or its shares pursuant to and/or traceable to, and in reliance on, the Registration Statement and Prospectus. CAGC is the issuer and Rodman & Renshaw is the Underwriter of the securities through the Registration Statement and Prospectus.

147. On April 29, 2010, the Company filed a Registration Statement and Prospectus with the SEC on form 424B5.[22]

148. The Prospectus incorporated by reference CAGC's false financial statements for fiscal years 2008 and 2009 that were contained in CAGC's 2008 and 2009 10-K.

149. The Prospectus contained the same false and misleading financial statements contained in CAGC's 2008 10-K and 2009 10-K as described above.

150. CAGC's 2008 and 2009 financial statements were materially false for the reasons set forth above.

151. The Individual Defendants are signatories of the Registration Statement and Prospectus.

152. Each of the Defendants owed to the purchasers of the stock obtained through the Registration

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[22] The Prospectus was pursuant to CAGC's Registration Statement No. 333-164810 filed with, and declared effective by, the SEC.

Statement and Prospectus the duty to make a reasonable and diligent investigation of the statements contained in the Registration Statement and Prospectus at the time they became effective to ensure that such statements were true and correct and that there was no omission of material facts required to be stated in order to make the statements contained therein not misleading.

153. None of the Defendants made a reasonable investigation or possessed reasonable grounds for the belief that the false financial statements contained in the Registration Statement and Prospectus were true or that there was no omission of material facts necessary to make the statements made therein not misleading.

154. Defendants issued and disseminated, caused to be issued and disseminated, and participated in the issuance and dissemination of, material misstatements to the investing public that were contained in the Registration Statement and Prospectus, which misrepresented or failed to disclose, among other things, the challenged facts set forth above. By reason of the conduct alleged herein, each defendant violated Section 11 of the Securities Act.

155. CAGC is the issuer of the stock sold in the Offering via the Registration Statement and Prospectus. As issuer of stock, the Company is strictly liable to Plaintiff and the Class for the material misstatements and omissions therein.

156. Crowe audited and certified CAGC's financial statements for fiscal years 2008 and 2009 that were included in the Registration Statement and Prospectus for the Offering.

157. Crowe certified and opined that CAGC's financial statements for 2008 and 2009 that were included in the Registration Statement and Prospectus were accurate and were prepared in accordance with GAAP, when in truth they were not.

158. Rodman and Renshaw was the underwriter for the firm commitment underwriting of the Offering.

159. At the time they purchased their shares of CAGC in the Offering, Plaintiff and members of the Class did so without knowledge of the true facts concerning the misstatements and omissions alleged herein.

160. This action is brought within one year after discovery of the untrue statements and omissions in the Registration Statement and Prospectus that should have been made and/or corrected through the exercise of reasonable diligence, and within three years of the effective date of the Registration Statement and Prospectus.

161. By virtue of the foregoing, Plaintiffs and the other members of the class are entitled to damages under Section 11 as measured by the provisions of the Section 11(e), from the Defendants and each of them, jointly and severally.

XII. FOURTH CAUSE OF ACTION

Violation of §15 of the Securities Act Against the Individual Defendants

162. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein. This claim is not based on, and does not allege, fraud.

163. This claim is asserted against each of the Individual Defendants, each of whom was a control person of CAGC during the relevant time period.

164. For the reasons set forth above and pursuant to the first and second claims, CAGC is liable to the plaintiffs and the members of the Class who purchased CAGC common stock in the Offering or pursuant and/or traceable to the Registration Statement based on the untrue statements and omissions of material fact contained in the Registration Statement and Prospectus, under §11 and §12(a)(2) of the Securities Act.

165. The Individual Defendants were control persons of CAGC by virtue of, among other things, their positions as senior officers, directors and/or controlling shareholders of the Company. Each was in a position to control and did in fact control CAGC and the false and misleading statements and omissions contained in the Registration Statement and Prospectus

166. None of the Individual Defendants made reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement and Prospectus were accurate and complete in all material respects. Had they exercised reasonable care, they could have known of the material misstatements and omissions alleged herein.

167. This claim was brought within one year after the discovery of the untrue statements and omissions in the Registration Statement and Prospectus and within three years after CAGC common stock was sold to the Class in connection with the Offer-

ing.

168. By reason of the misconduct alleged herein, for which CAGC is primarily liable, as set forth above, the Individual Defendants are jointly and severally liable with and to the same extent as CAGC pursuant to Section 15 of the Securities Act.

XIII. JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

a. Determining that this action is a proper class action and certifying Plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure and Plaintiffs' counsel as Class Counsel;

b. Awarding compensatory damages in favor of Plaintiffs and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

c. Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action; and

d. Such other and further relief as the Court may deem just and proper.

Dated: June 22, 2011 Respectfully submitted,

THE ROSEN LAW FIRM, P.A.

/s/ Laurence M. Rosen

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Attorneys for Plaintiffs

CERTIFICATION

The individual or institution listed below (the "Plaintiff") authorizes the Rosen Law Firm, P.A. to file an action or amend a current action under the federal securities laws to recover damages and to seek other relief against China Agritech. Inc. ("CAGC"), and certain of its officers and directors. The Rosen Law Firm, P.A. agrees to prosecute the action on a contingent fee basis not to exceed one-third of any recovery and will advance all costs and expenses. Any legal fees and expenses will be determined by, and payable, only upon order of the U.S. District Court.

Plaintiff declares, as to the claims asserted under the federal securities laws, that:

1. I have reviewed the complaint against CAGC and certain of its officers and directors and I retain the Rosen Law Finn, P.A. as counsel in this action for all purposes.

2. I did not engage in transactions in the securities that are the subject of this action at the direction of plaintiff's counsel or in order to participate in this or any other litigation under the securities laws of the United States.

3. I am willing to serve as a lead plaintiff either individually or as part of a group. A lead plaintiff is a representative party who acts on behalf of other class members in directing the action, and whose duties may include testifying at deposition and trial.

4. The following is a list of all of the purchases and sales I have made in CAGC securities during the class period set forth in the complaint. I have made

no transactions during the class period in the debt or equity securities that are the subject of this lawsuit except those set forth below.

Number of Shares Purchased or Sold	Date(s) Purchased	Price Paid Per Share	Date(s) Sold (if applicable)	Price Sold Per Share
5,000	April 21 2010	$20.37964		$
5,000	May 3, 2010	$16.10		$
		$		$
2,000		$	May 6, 2010	$ 15.87
8,000		$	July 7, 2010	$ 10.60

5. I have not, within the three years preceding the date of this certification, sought to serve or served as a representative party on behalf of a class in an action involving alleged violations of the federal securities laws, except: for the following company(ies):

6. I will not accept any payment for serving as a representative party beyond my pro rata share of any recovery, except reasonable costs and expenses, such as travel expenses and lost wages directly related to the class representation, as ordered or approved by the court pursuant to law.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of June, 2011.

Signature: */s/Tan Tee Yong*

Name: Tan Tee Yong

REDACTED

* * *

APPENDIX E

Decision Denying Class Certification in *Dean*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-01331-RGK (PJWx)	Date	May 3, 2012
Title		THEODORE E. DEAN v. CHINA AGRITECH, et al	
Present: The Honorable		R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE	

* * *

I. INTRODUCTION

On February 2, 2011, Theodore Dean ("Dean"), on behalf of himself and all others similarly situated, filed a Complaint against China Agritech, Inc. ("Agritech") and several individual defendants, including members of Agritech's executive management team and board of directors. On June 22, 2011, Dean filed an Amended Complaint, which added Slava Vanous, Randolph Daniels-Kolin, Clair Harpster, and Tan Tee Yong as plaintiffs. It also added several additional individual defendants, Rodman and Renshaw, LLC, and Crowe Horwath, LLP as defendants ("collectively, Defendants"). The Amended

Complaint alleges claims for violations of (1) Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Securities and Exchange Commission Rule 10b-5 against Agritech and all individual defendants; (2) Section 20(a) of the Exchange Act against the individual defendants; (3) Section 11 of the Securities Act of 1933 ("Securities Act") against all defendants; and (4) Section 15 of the Securities Act against the individual defendants. On October 27, 2011, the Court dismissed the case as to all individual defendants.

Presently before the Court is Slava Vanous's, Randolph Daniels-Kolin's, Clair Harpster's (collectively, "Plaintiffs") Motion for Class Certification pursuant to Federal Rule of Civil Procedure ("Rule") 23 and Agritech's Motion to Exclude the Declaration of Plaintiffs' Expert Dr. Werner.[1] For the following reasons, the Court **DENIES** Agritech's Motion and **DENIES** Plaintiffs' Motion.

II. FACTUAL BACKGROUND

Agritech is a holding company incorporated in the state of Delaware with its principal place of business in Beijing, China. Agritech manufactures and distributes organic compound fertilizers for agricultural application in China. The company is publicly traded within the United States as a result of a financial technique known as a "reverse merger." In a reverse merger, a private company seeking to trade or sell

[1] This Motion appears to be brought by individual defendants that were dismissed by Court order on October 27, 2011. However, as the Motion is also brought by Agritech, the Court proceeds as if it was brought solely by Agritech.

shares in public equity markets will acquire a publicly traded shell company in order to quickly go public and avoid certain regulatory requirements. Once the reverse merger is complete, management of the former private company generally takes control of the merged company. Agritech completed its merger in 2005 and began publicly offering its stock on the NASDAQ stock exchange.

Plaintiffs allege that Agritech materially misstated its net revenue and income for the third quarter 2009 on its Securities and Exchange Commission ("SEC") Form 10-Q filing. Plaintiffs allege that Agritech also materially misstated its net revenue and income for fiscal years 2008 and 2009 in its 2009 SEC Form 10-K filing. Plaintiffs also allege that on April 29, 2010, Agritech filed a registration statement and prospectus with the SEC on Form 424B5 in anticipation of its public offering completed on May 4, 2010. This form incorporated the allegedly false financial statements for fiscal years 2008 and 2009.

On February 3, 2011, Lucas McGee Research ("LM Research") published a report contending that Agritech was a fraud based on allegations that the company's factories were either not in operation or producing far less than reported. The report further stated that Agritech had filed financial statements to the SEC for fiscal year 2009 that showed substantially larger net revenue as compared to Agritech's filings to the Chinese State Administration for Industry and Commerce ("SAIC"). Additionally, the report alleged that Agritech's factories were idle during that period. After publication of the report, the

value of Agritech stock declined from $10.78 per share on February 2, 2011, to $9.85 per share on February 3, 2011, representing a day-over-day decline of 8.63%. On February 15, 2011, Bronte Capital issued a report containing similar allegations to the LM Research report regarding Agritech's production levels. Agritech's stock value again declined from $9.21 per share on February 4, 2011 to $7.44 per share on February 16, 2011, a decline of approximately 16%.

As a result of these actions, Plaintiffs allegedly suffered damages in connection with the purchase of their Agritech stock.

III. JUDICIAL STANDARD

Rule 23 governs class actions. To certify a class action, a Plaintiff must first meet the burden of satsifying each of the four prerequisites set out in Rule 23(a). *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001), *as amended* 273 F.3d 1266 (2001). These prerequisites are: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a).

In addition to proving the four prerequisites of Rule 23(a), a plaintiff must establish at least one of the three requirements of Rule 23(b). Rule 23(b) provides that a class action is appropriate where: (1) the prosecution of separate actions would create a risk of

(a) inconsistent or varying adjudications, or (b) individual adjudications dispositive of the interest of other class members not parties to those adjudications; (2) the party opposing the class has refused to act on grounds that apply generally to the class; or (3) the questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

IV. DISCUSSION

Defendants move to exclude the expert declaration of Dr. Werner. The Court considers this motion and then turns to Plaintiffs' Motion for Class Certification.

A. Dr. Werner's Declaration Should Not Be Excluded

Agritech argues that the Court should exclude the expert declaration of Dr. Werner because it is unreliable. Specifically, Agritech argues that Dr. Werner did not use generally accepted methods in conducting an analysis of the *Cammer* factors, which he used to determine whether Agritech stock was trading on an efficient market. The Court disagrees.

Federal Rule of Evidence 702 provides:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or

> to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

In *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), the Supreme Court held that a district court judge must ensure that any expert scientific testimony is both relevant and reliable. *Id.* at 589. This requires a preliminary assessment, under Federal Rule of Evidence 104(a), as to whether the expert's reasoning and methodology is valid and can properly be applied to the facts of the case. *Id.* at 592-93. To make this determination, a court may consider the following non-exclusive list of factors: (1) whether the theory or method can be or has been tested, (2) whether the theory has been subjected to peer review and publication, (3) the known or potential rate of error of the theory or method, and (4) whether the method has been generally accepted by the community. *Id.* at 593-94. However, the Court may consider other factors and need not consider all the factors listed in *Daubert*. "The trial court must have the same kind of latitude in deciding how to test an expert's reliability . . . as it enjoys when it decides whether or not that expert's relevant testimony is reliable." *Kumho Tire Co v. Carmichael*, 526 U.S. 137, 152 (1999).

Agritech argues that Dr. Werner's analysis of the *Cammer* factors is unreliable. The majority of Agritech's Motion challenges Dr. Werner's analysis of the most important *Cammer* factor: whether there

was a cause-effect relationship between corporate news and the price of Agritech stock. Agritech argues that the analysis is unreliable because Dr. Werner failed to use a generally accepted scientific method in conducting this analysis. To determine whether there was a cause-effect relationship, Dr. Werner conducted an event study. Dr. Feinstein, another of Plaintiff's experts, confirms that "[t]he event study is the paramount tool for testing market efficiency." (Feinstein Decl. ¶ 63 (citing Eugene F. Fama, *Efficient Capital Markets: II, J. Finance*, 1607 (1991)).) Agritech does not set forth any evidence to the contrary. Agritech also attacks the way in which Dr. Werner conducted his event study. Specifically, Agritech takes issue with Dr. Werner's use of subjective criteria in selecting events to study, as well as his use of stock price movement at a statistically insignificant level. Dr. Feinstein, however, confirms that the method used by Dr. Werner to do his event study is the method set forth in the literature. (Feinstein Decl. ¶¶ 67-68.) Additionally, other academics and experts recognize that the selection of events is a subjective task (*see, e.g.*, Feinstein Decl. ¶¶ 20, 70-73; Pl.'s Opp. at 10) and that stock price movement is important and a valid way of assessing the existence of a cause-effect relationship, even if the movement is not statistically significant at that level. Even Defendants' expert, Dr. Roper, uses this method in his academic work.

Defendants also argue that Dr. Werner's analysis of other *Cammer* factors is unreliable. However, as with the cause-effect factor, Plaintiffs have shown that Dr. Werner used reliable methods. Specifically, Dr. Werner's analysis of how many analysts were

following Agritech's stock is reliable because the definition of analyst that Dr. Werner used is supported by the literature, case law, and other experts' opinions. (Pl.'s Opp. at 19.)

That Defendants do not agree with Dr. Werner's conclusions is not enough to make his declaration unreliable. *Daubert*, 509 U.S. at 594-95. Plaintiffs have shown that, in his analysis, Dr. Werner used generally accepted methods that have been used and tested and have appeared in published journals. Therefore, the Court finds that Dr. Werner's declaration is reliable and **DENIES** Defendants' Motion to exclude it.

B. Class Certification

Plaintiffs seek to certify a class on behalf of all persons or entities that purchased or otherwise acquired the publicly traded common stock of Agritech between November 12, 2009 and March 11, 2011. Although Plaintiffs satisfy the prerequisites of Rule 23(a), they are unable to satisfy the requirements of Rule 23(b)(3).

1. The Requirements of Rule 23(a) are Satisfied

Plaintiffs contend that all four requirements of Rule 23(a) are met. The Court agrees.

Generally, courts have held that numerosity is satisfied when the class size exceeds forty members. *E.g., Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654-56 (C.D. Cal. 2000); *In re Cooper Cos. Inc. Secs. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009) (citing *Consolidated Rail Corp. v. Town of Hyde Park*, 47 F.3d 473,

483 (2d Cir. 1995)). Thus, in securities cases, when millions of shares are traded during the proposed class period, a court may infer that the numerosity requirement is satisfied. *Cooper*, 254 F.R.D. at 634; *see also Blackie v. Barrack*, 524 F.2d 891, 901 (9th Cir. 1975) (numerosity not an issue where the class period encompassed the purchasers involved in 120,000 transactions involving 21,000,000 shares). On average, 4.4 million shares of Agritech stock were sold per week during the class period. (Pl.'s Compl. ¶ 122(c).) Therefore, the Court may safely presume that the class is sufficiently numerous to render it impracticable to join all members.

To demonstrate commonality, a plaintiff must prove that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). In their Complaint, Plaintiffs allege common questions of law or fact including whether Defendants violated federal securities law by making misleading or false statements to the public about Agritech's business operations and earnings. Therefore, the Court finds that Plaintiffs have satisfied the commonality requirement.

To demonstrate typicality, a plaintiff must show that "the claims . . . of the representative parties are typical of the claims . . . of the class." Fed. R. Civ. P. 23(a)(3). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Id.* (citation and internal quotations omitted). Here, the action is based on the Defendants' alleged

misrepresentations, which harmed not only the representative Plaintiffs but all class members because they purchased stock based on these misrepresentations. Thus, Defendants' conduct and the injury suffered is the same for all class members. Therefore, the Court finds that Plaintiffs have satisfied the typicality requirement.

To satisfy adequacy, the person representing the class must be able to "fairly and adequately protect the interests of the class." Fed. R. Civ. Pro. 23(a)(4). Adequacy requires (1) that the representative plaintiff does not have a conflict of interest with the proposed class and (2) that the plaintiff is represented by qualified and competent counsel. *Hanlon*, 150 F.3d at 1020. The Court is unaware of any conflict of interest between Plaintiffs and the proposed class. Additionally, Plaintiffs' counsel is competent to represent the class. The record shows that class counsel has significant experience in litigating complex class actions, especially in the area of securities fraud. (Rosen Decl. Ex. 2.) Accordingly, the Court finds that the adequacy requirement is satisfied.

2. The Requirements of Rule 23(b) Are Not Satisfied

In addition to satisfying the prerequisites of Rule 23(a), a plaintiff seeking class certification must also satisfy one of three requirements of Rule 23(b). Plaintiff contends this action meets the requirements of Rule 23(b)(3). For the following reasons, the Court disagrees.

Certification is appropriate under Rule 23 "whenever the actual interests of the parties can be served

best by settling their differences in a single action." *Hanlon*, 150 F.3d at 1022. A court may certify a class action under Rule 23(b)(3) if it: (1) finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and (2) that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

The predominance requirement asks "whether proposed classes are sufficiently cohesive" by focusing on "the relationship between the common and the individual issues." *In re Wells Fargo Mortg. Overtime Pay Litig.*, 571 F.3d 953, 957 (9th Cir. 2009). A plaintiff asserting securities fraud under Section 10(b) must prove (1) a material misrepresentation or omission, (2) scienter, (3) a connection with the purchase or sale of a security, (4) reliance, (5) economic loss, and (6) loss causation. *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005). As discussed above, Defendants' alleged conduct is common to all members of the proposed class. However, the reliance element focuses on the action of each individual plaintiff. Therefore, "the factor that threatens Plaintiffs' ability to survive the predominance inquiry is reliance." *In re Countrywide Fin. Corp. Secs. Litig.*, 273 F.R.D. 586, 607 (C.D. Cal. 2009).

Courts have recognized that where reliance is an element of the cause of action, individual issues of reliance would predominate over common issues and no class would be able to be certified. *Dura Pharms.*, 544 U.S. at 341. In securities litigation, however, courts will presume reliance as to the class where there has been a fraud on the market. *Basic, Inc. v.*

Levinson, 485 U.S. 224, 242-43 (1988). This presumption rests on the theory that "investors presumably rely on the market price, which typically reflects the misrepresentation or omission." *No. 84 Employer-Teamster Joint Council Pension Trust Fund v. Am. West Holding Corp.*, 320 F.3d 920, 934 n.12 (9th Cir. 2003). To invoke the fraud-on-the-market presumption of reliance, a plaintiff must establish (1) that the securities were traded in an efficient market and (2) that the defendants' misrepresentations were material and public. *Conn. Retirement Plans & Trust Funds v. Amgen, Inc.*, 660 F.3d 1170, 1172 (9th Cir. 2011). While plaintiffs must establish that the market was efficient and that the misrepresentations were public, materiality need only be plausibly alleged at the class certification stage. *Id.*

The Ninth Circuit uses the *Cammer* factors to determine whether a company's stock was traded on an efficient market. *Binder v. Gillespie*, 184 F.3d 1059, 1064 (9th Cir. 1999) (citing to *Cammer v. Bloom*, 711 F. Supp. 1264, 1286-87 (D.N.J. 1989). The *Cammer* factors examine: (1) the average weekly trading volume of the security during the relevant period; (2) the number of securities analysts following the security; (3) the extent to which market makers trade in the security; (4) the company's eligibility to file an SEC Form S3; and (5) the existence of a cause-effect relationship between unexpected corporate news and a change in the price of the security. *Id.* at 1065. The first four factors rely on circumstantial evidence to assess whether the market for the security is conducive to informational efficiency. *Countrywide*, 273 F.R.D. at 613. The fifth factor, instead of "relying on

circumstantial evidence that a security's market is conducive to efficiency . . . explores whether an important result of an efficient market exists." *Id.* at 614. These factors are non-exclusive and meeting all factors is not always necessary. *Id.* at 613 (citing *Unger v. Amedisys Inc.*, 401 F.3d 316, 323 (5th Cir. 2005)). However, several courts have recognized that the fifth factor is the most important. *Id.* at 614.

i. Plaintiffs Satisfy the First, Third, and Fourth Cammer factors.

Cammer suggests that "[t]urnover by average weekly trading of two percent or more of the outstanding shares would justify a strong presumption that the market for the security is an efficient one; one percent would justify a substantial presumption." *Cammer*, 711 F. Supp. at 1186. Plaintiffs' expert calculates Agritech's average weekly trading volume to be 29.4 percent. (*Id.*) Even if Dr. Werner failed to filter out noise trading in conducting his analysis, his calculation of nearly twenty-five percent average weekly trading volume is well above the one percent required for a presumption that the market is efficient. Therefore, analysis of the first factor supports a finding that Agritech stock was trading on an efficient market.

"Ten market makers for a security would justify a substantial presumption that the market for the security is an efficient one; five market makers would justify a more modest presumption" of efficiency. *Cammer*, 711 F. Supp. at 1293. Dr. Werner concludes that there were six market makers for Agritech stock. (Werner Decl. ¶ 29.) Further, Dr. Feinstein analyzed market maker data provided by

Bloomberg and concluded that at least 290 firms made a market in Agritech common stock, including the six listed by Dr. Werner. (Feinstein Decl. ¶ 38.) Defendants do not dispute this evidence. Therefore, the Court finds that the third factor supports a finding of market efficiency.

A company's ability to file an S-3 Registration Statement with the SEC implies efficiency. Both Dr. Werner and Dr. Feinstein agreed that not only was Agritech able to file an S-3 statement, but that it did file a statement on March 12, 2010. Thus, the fourth factor also supports a finding of efficiency.

ii. Plaintiffs Fail to Satisfy the Second and Fifth Cammer Factors

The more securities analysts following and reporting on a company's stock, the greater the likelihood that the stock trading public is relying on the information the company disseminates. *Cammer*, 711 F. Supp. at 1286. Dr. Werner concludes that there were thirteen analysts following Agritech stock and that they collectively issued twenty-eight reports over the class period. (Werner Decl. ¶ 28.) However, Dr. Werner provides no information as to these thirteen analysts. Without such information, the Court cannot make a determination as to whether these individuals were, in fact, analysts. Accordingly, Plaintiffs have failed to meet their burden of proof on this issue and this factor cannot support a finding of market efficiency.

"One of the most convincing ways to demonstrate efficiency [is] to illustrate over time, a cause and effect relationship between company disclosures and

resulting movements in stock price." *Cammer*, 711 F. Supp. at 1291. The most common way to test a causal connection is through conducting event studies, which attempt to determine whether new information correlates with price movement. *Countrywide*, 273 F.R.D. at 614. Causation may be inferred if there is a correlation. *Id.* This inference is stronger under certain circumstances, such as "(1) the more statistically significant the correlation; (2) the more objectively defined the event is; (3) the better the study controls for nonfraud factors; and (4) the larger and more representative the sample." *Id.* Experts on both sides agree that the correlation is statistically significant at a 95% confidence level. Even after acknowledging this, Dr. Werner found market efficiency after conducting an event study where he found correlation at a statistically significant level for only one of four events. Dr. Feinstein conducted two event studies, one using the same four events as Dr. Werner and the other using those four events in addition to three others. Dr. Feinstein's studies found that, in the aggregate, there was a statistically significant level of correlation between Agritech's disclosures and movement in the price of its stock. However, it is unclear how meaningful this finding is, as the level of correlation was measured in the aggregate. Even if the Court weighed evidence from Dr. Feinstein equally to that of Dr. Werner, Plaintiffs' own experts differ in their conclusions. This fact, alone, leads the Court to find that Plaintiffs have not satisfied their burden to show conclusive evidence of a causal relationship between Agritech's disclosures and movement in the price of its stock.

Therefore, the Court finds that the fifth factor does not support a finding of market efficiency.

In weighing the above factors, the Court finds that Plaintiffs are unable to establish that Agritech stock was traded on an efficient market. Because Plaintiffs cannot establish that there was an efficient market, they are unable to rely on the fraud-on-the-market presumption of reliance and the Court need not consider whether any misrepresentations were public or material. Furthermore, without a presumption of reliance, Plaintiffs are unable to establish that questions of law or fact common to class members predominate over any questions affecting only individual members. Therefore, Plaintiffs are unable to meet the requirements of Rule 23(b)(3).

V. CONCLUSION

For the foregoing reasons, the Court **DENIES** Defendants' Motion to Exclude and **DENIES** Plaintiffs' Motion for Class Certification.

IT IS SO ORDERED.

* * *

APPENDIX F

Smyth Amended Complaint

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KEVIN SMYTH, TE GYUN KIM, PREMIUM ALLIANCE INVESTMENT LIMITED, SANG CHUL HAN, HSP INVESTMENTS LIMITED, SEUNG 110 LEE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, Plaintiffs, vs. CHINA AGRITECH, INC.; YU CHANG; YAU-SING TANG a/k/a GARETH TANG; GENE MICHAEL BENNETT; XIAO RONG TENG; MING FANG ZHU; ZHANG "ANNE" WANG; CHARLES LAW, a/k/a CHARLES C. LAW, CHIEN-LEE C. LOH, CHARLES CHIEN-	No.: CV-13-03008 (RGK) (PJWx) AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS CLASS ACTION **JURY TRIAL DEMANDED**

LEF LAW, AND CHARLES CHIEN-LEE LOH; LUN ZHANG DM; AND HAI LIN ZHANG,

Defendants.

1. Plaintiffs Kevin Smyth, Te Gyun Kim, Premium Alliance Investment Limited, Sang Chul Han, HSP investment Limited, and Seung Ho Lee ("Plaintiffs") individually and on behalf of all other persons similarly situated, by their undersigned attorneys, allege in this Amended Complaint (the "Complaint") the following upon knowledge with respect to their own acts, and upon facts obtained through an investigation conducted by their counsel, which included, *inter alia*: (a) review and analysis of relevant filings made by China Agritech, Inc. ("CAGC" or the "Company") with the United States Securities and Exchange Commission (the "SEC"); (b) review and analysis of defendants' public documents, conference calls and press releases; (c) review and analysis of securities analysts' reports and advisories concerning the Company; (d) information readily obtainable on the Internet; (e) interviews of several witnesses with personal knowledge of the relevant facts; (f) investigation of Chinese State Administration of Industry and Commerce ("SAIC") filings; (g) investigation of Chinese State Administration of Taxation ("SAT") filings; and (h) investigation and analysis of companies alleged to be suppliers of the Company.

I. NATURE OF THE ACTION

2. This is a class action on behalf of a class consisting of all persons and entities, other than defendants and their affiliates, who purchased the publicly traded common stock of CAGC between November 12, 2009 through March 11, 2011 (the "Class Period"), seeking to recover damages caused by defendants' violations of federal securities laws (the "Class.").

3. This Complaint alleges claims for violations of §10(b) and §20(a) of the Securities Exchange Act of 1934 on behalf of all Class members.

4. CAGC is a holding company. Its purported business operations are primarily conducted through its direct and indirect subsidiaries in the People's Republic of China ("PRC"). It purports to manufacture and sell organic compound fertilizers and related agricultural products.

5. During the Class Period, CAGC and its officers and directors engaged in a systemic and wide-ranging scheme that fraudulently created nearly all of CAGC's reported revenue and earnings:

- Overstating revenue by at least 900% for fiscal 2009 and 1,444% for fiscal 2008.
- Reporting $76.13 million of revenue in 2009 and $45.24 million in 2008, when the true revenue figures were not more than $7.6 million in 2009 and $3.0 million in 2008.
- Overstating net income by at least 536% for fiscal 2009. Reporting a profit for fiscal 2008, while the Company was in fact losing money.

- Reporting $6.17 million of net income in 2009 and $9.83 million in 2008, when the true net income figures were not more than $0.97 million in 2009 and a net loss of ($1.88) million in 2008.
- Failing to disclose material related party transactions - CAGC signed a contract effective December 8, 2008 to pay a company controlled by its CEO Chang approximately $4.0 million for raw materials.
- CAGC has maintained two materially different sets of financial accounts, one for investors that it files with the SEC and one for its true business operations that it provides to the Chinese government showing revenue and income only a tiny fraction of that reported to the SEC and investors.

6. During the Class period when CAGC was issuing false and misleading financial statements, Defendants Teng, Tang and Zhu sold over $3.0 million of CAGC stock and CAGC sold over $20.0 million in a public offering.

7. Then on March 14, 2011, CAGC's auditors Ernst & Young Hua Ming ("E & Y") stated that they are not able to rely on management's representations any longer.

8. The same day E &Y's role as auditor was terminated; NASDAQ delisted and halted trading in CAGC's stock "in order to protect the public interest."

9. In the wake of the scandal, nearly all of the

Company's directors and officers have resigned.

10. CAGC has not filed its annual report for 2010 on Form10-K with the SEC, which was originally due on April 15, 2011. Consequently, on October 17, 2012 the SEC issued an enforcement order revoking the registration of CAGC's stock. Thus, CAGC's stock is no longer publicly traded, effectively rendering it worthless. The last trade of CAGC shares prior to the revocation order was at $0.16/share.

11. CAGC's false statements have caused investors substantial losses as its shares have dropped from $10.78/share to nearly zero as a result of defendants' violations of the securities laws.

II. JURISDICTION AND VENUE

12. The Securities Exchange Act claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. § 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5).

13. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

14. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa), 28 U.S.C. § 1391(b), 28 U.S.C. § 1391(d).

15. In connection with the acts, conduct and other wrongs alleged herein, Defendants either directly or indirectly used the means and instrumentalities of interstate commerce, including but not limited to the United States mails, interstate telephone communi-

cations and the facilities of the national securities exchange.

III. PARTIES

16. Plaintiffs Kevin Smyth, Te Gyun Kim, Premium Alliance Investment Limited, Sang Chul Han, HSP Investments Limited, and Seung Ho Lee purchased CAGC common stock during the Class Period and have suffered damages as a result. The PSLRA Certifications of the Plaintiffs have previously been filed with the Court and are incorporated herein by reference.

17. Defendant CAGC is a Delaware corporation with its principal executive offices located at Room 3F, No. 11 Building, Zhonghong International Business Garden, Future Business Center, Chaoyang North Road, Chaoyang District, Beijing, China 100024. A CAGC subsidiary maintains an office in California.

18. CAGC, through its subsidiaries, purports to manufacture and sell organic compound fertilizers and related agricultural products in the PRC.

19. To have its stock publicly traded in the United States, CAGC employed a device called a "reverse merger" in 2005. In a reverse merger, a publicly traded shell company acquires the private company seeking to go public. In exchange, the shareholders of the former private company receive a controlling share of the public company.

20. As a result of the reverse merger, CAGC became a holding company that primarily operates through its subsidiaries in the PRC.

21. Defendant Yu Chang ("Chang") was and is the Company's CEO, President, Secretary and Chairman of the Board at all relevant times. In addition, Defendant Chang was a substantial shareholder of the Company throughout the Class Period. When the Company filed its 2008 10-K and 2009 10-K, Defendant Chang owned 41.96% and 40.23% of the Company's stock, respectively.

22. Defendant Yau-Sing Tang a/k/a Gareth Tang (collectively "Tang") was the Company's CFO and Controller from October 2008 through January 16, 2012—when he suddenly resigned. In addition, Defendant Tang was a shareholder of the Company throughout the Class Period. When the Company filed its 2008 10¬K and 2009 10-K, Defendant Tang owned 1.04% and 0.4% of the Company's stock, respectively.

23. Defendant Gene Michael Bennett ("Bennett") was a director of CAGC from October 2008 through June 7, 2012—when he resigned. At all times during the Class Period, Bennett was the chair of CAGC's audit committee, as well as a member of CAGC's Nominating and Governance Committee. After the CAGC Defendants' fraud was disclosed, Bennett was the head of the Company's Special Committee investigating the allegations of fraud.

24. Bennett has served as an officer and/or director of numerous Chinese reverse merger frauds. Bennett served as a director and CFO of Duoyuan Printing, Inc.—which is the target of an SEC investigation for filing materially false and financial statements.

25. Bennett also served as director of China Shenghuo Pharmaceutical Holdings—a company like Duoyuan, that was subject to civil securities class action lawsuits. According to a March 30, 2011 Bloomberg BusinessWeek article, Bennett's biographies listed in certain SEC filings of companies where he was employed, misstated his qualifications. Contrary to the descriptions, Bennett never worked with the accounting firm of Grant Thornton and he never received a law degree from the University of Michigan. The misstated qualifications appeared in China Pharma Holdings, Inc. ("China Pharma") 2008 and 2009 10-K. Interestingly, China Pharma was represented by defendant Charles Law and his law firm, King and Wood, in connection with its securities' registration, and in 2011 China Pharma had to restate its financial statements for fiscal years 2009 and 2010.

26. Defendant Xiao Rong Teng ("Teng") was and is a director of CAGC at all relevant times. Teng also served as the Company's COO from February 2005 to March 2009. In addition, Teng was a substantial shareholder of the Company throughout the Class Period. When the Company filed its 2008 10-K and 2009 10¬K, Teng owned 2.53% and 2.15% of the Company's stock, respectively.

27. Defendant Ming Fang Zhu ("Zhu") was CAGC's Chief Operating Officer from March 2009 through May 27, 2011- when he resigned. From April 2007 to March 2009, Zhu served as President of Beijing Agritech Fertilizer Co, Ltd., an indirect subsidiary of the Company.

28. Defendant Lun Zhang Dai ("Dai") was and is

a director of CAGC at all relevant times. Dai also serves as a member of the Company's Audit Committee, Compensation Committee and Nominating and Governance Committee. Dai is referred to in CAGC's SEC filings as Lun Zhang Dai and Lunzhang Dai.

29. Defendant Hai Lin Zhang ("Zhang") was a director of CAGC from October 2008 through March 13, 2012—when Zhang resigned. Zhang also served as a member of the Company's Audit Committee, Compensation Committee and Nominating and Governance Committee. Zhang is referred to in CAGC's SEC filings as Hai Lin Zhang and Hailin Zhang.

30. Defendant Charles Law a/k/a Charles C. Law, Chien-Lee C. Loh, Charles Chien-Lee Law, and Charles Chien-Lee Loh. (collectively "Law") was a director of CAGC from January 2010 to February 4, 2011. According to the Company's SEC filings, Law is a qualified U.S. attorney who has an understanding of SEC compliance requirements. Law's law firm, King & Wood represented CAGC in connection with CAGC's initial reverse merger registration. It appears that Law and/or King & Wood have been involved with registration of many Chinese reverse merger companies, including Keyuan Petrochemicals, Inc., which is also the subject of a securities class action, alleging, *inter alia*, accounting improprieties and failure to disclose related party transactions.

31. Defendant Zheng "Anne" Wang ("Wang") was a director of CAGC from December 2009 until March 14, 2011. Wang has been Vice-President of Carlyle Asia Growth Capital, a subsidiary of the Carlyle

Group ("Carlyle"), since December 2007. According to the Company's SEC filings, Wang was Carlyle's designee to CAGC's board and was determined by the Board of Directors not to be an "independent director."

32. Chang, Tang, Bennett, Teng, Zhu, Dai, Zhang, Law, Wang are collectively referred to hereinafter as the "Individual Defendants."

The Audit Committee

33. According to the Company's audit committee charter, members of the audit committee have the responsibility to, among other things:

- ".... (a) assists the Board's oversight of (i) the integrity of the Company's financial reporting process and system of internal controls...";
- "Review and discuss with management and the independent auditors, before filing with the Securities and Exchange Commission, the annual audited financial statements and quarterly financial statements. Review with the independent auditors and management the results of the audit and the Company's specific disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations.- Discuss matters required to be communicated to Audit Committee in accordance with Statement on Auditing Standards No. 61."; and
- "With the independent auditors, management and the internal auditors, periodically review and discuss significant (a) financial reporting

> issues and practices, and critical accounting policies and estimates. (b) issues regarding accounting principles and financial statement presentation (including any significant changes in the Company's selection or application of accounting principles). and (c) issues as to the adequacy of the Company's internal control systems and compliance with applicable laws and regulations. Assess management's attitude toward internal controls, the process for establishing and monitoring internal control systems and any special audit steps adopted in light of material control deficiencies."

34. According to CAGC's 2009 10-K, the audit committee was comprised of Defendant Bennett, Dai and Zhang, with Bennett serving as the Chairman. Bennett was also determined by the board of directors to be the necessary audit committee member that qualifies as an "audit committee financial expert".

35. Defendant Bennett, Dai and Zhang as members of the audit committee had an affirmative duty of oversight and responsibility for the integrity of CAGC's financial reporting.

CAGC's Code of Ethics Acknowledges Related Party Transactions Should be Avoided

36. The Company's Code of Ethics – which CAGC's officers and directors presumably promised to adhere to - prohibits self-dealing transaction such as those engaged in by defendant CEO Chang:

> "The chief executive officer, chief financial officer, comptroller, chief accounting officer or

persons performing similar functions (collectively, "Senior Financial Officers") hold an important and elevated role in corporate governance. Senior Financial Officers fulfill this responsibility by prescribing and enforcing the policies and procedures employed in the operation of the enterprise's financial organization, and by demonstrating the following:

> I. Honest and Ethical Conduct Senior Financial Officers will exhibit and promote the highest standards of honest and ethical conduct through the establishment and operation of policies and procedures that:
>
> • ....
>
> • **Prohibit and eliminate the appearance or occurrence of conflicts between what is in the best interest of the enterprise and what could result in material personal gain for a member of the financial organization, including Senior Financial Officers.".**

[Emphasis added.]

Respondeat Superior Liability

37. CAGC is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency, as all of the wrongful acts complained of herein were carried out within the scope of their employment with authorization.

38. The *scienter* of the Individual Defendants and other employees and agents of the Company is simi-

larly imputed to CAGC under *respondeat superior* and agency principles.

IV. DEFENDANTS' MATERIAL OMMISSIONS AND MISREPRESENTATIONS

A. The 2009 Q3 10-Q is False and Materially Misstated

39. The Class period begins on November 12, 2009 when the Company filed with the SEC its report for the third quarter of 2009 on Form 10-Q ("2009 Q3 10-Q") containing false and misleading financial statements.

40. The false and misleading 10-Q was signed by defendants Chang and Tang. Chang and Tang also signed the accompanying Sarbanes-Oxley ("SOX") certifications, attesting to the accuracy of CAGC's financial statements.

41. The 2009 Q3 10-Q was false because it materially misstated CAGC's revenue and net income for the quarter.

42. According to CAGC's SEC filings, in 2009 CAGC had four operating subsidiaries located in the PRC: Beijing Agritech, Pacific Dragon, Anhui Agritech, and Xinjiang Agritech.

43. Plaintiffs' counsel obtained financial statements filed by the four subsidiaries with both the PRC State Administration for Industry and Commerce ("SAIC")[1] and PRC State Administration of

[1] The SAIC (State Administration for Industry and Commerce) is the Chinese government body that regulates industry and commerce in China. It is primarily responsible for business registrations, issuing and renewing business licenses and acts

Taxation ("SAT") [2].

44. The consolidated financials reported by CAGC with the SAIC and SAT for *entire fiscal year* 2009 are substantially similar to each other, and both report revenue and income that are substantially less than the revenue and income CAGC reported in the 2009 Q3 10-Q with the SEC.

(In USD Million)	**SEC Nine Months Ended Sept. 30, 2009**	**SAIC for Entire fiscal year 2009**	**SAT for Entire Fiscal Year 2009**
Net Revenue	$55.38	$7.02	$7.59
Net Income	$12.83	$0.97	$0.93

45. The financial statements filed by CAGC with the two PRC government authorities indicate the true financial performance of the Company because.

- Under PRC law, penalties for filing false SAIC filings include fines and revocation of the entity's business license.[3]
- If an entity's business license is revoked, the People's Bank of China[4] requires all bank accounts of that entity be closed.[5]

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as the government supervisor of corporations. All Chinese companies are required to file financial statements with the Chinese government annually or bi-annually.

[2] The SAT (State Administration of Taxation) is PRC equivalent of the Internal Revenue Service in the U.S.

[3] "Measures for the Annual Inspection of Enterprises" issued on February 24, 2006, Article 20.

- Without a business license the entity cannot legally conduct any business.
- The financial statements CAGC filed in the PRC with the SAIC are required by law to be prepared according to PRC GAAP and audited by PRC CPA firms.[6] Agritech Fertilizer Limited's financial statements filed with the SAIC were audited by Beijing Zhonghui Xincheng CPA Firm, and its SAIC annual reports signed by Yu Chang. Pacific Dragon Fertilizer Co., Ltd.'s financial statements were audited by Heilongjiang Huaxin CPA Firm. And its SAIC annual reports signed by Yu Chang. Xinjiang Agritech Agricultural Development Co., Ltd.'s financial statements were audited by Xinjiang Runtong CPA Firm and its SAIC annual reports were signed by Yu Chang. Anhui Agritech Development Co., Ltd.'s financial statements were audited by Bengbu Tianyi CPA Firm and its SAIC annual reports signed by Yu Chang.

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[4] People's Bank of China in PRC is equivalent to the Federal Reserve in the U.S.

[5] "Measures for the Administration of RMB Bank Settlement Accounts" issued in April 2003. (No.5 [2003]), Article 49.

[6] Beijing Agritech's 2008 and 2009 financial statements are audited by Beijing Zhonghui Xincheng CPA Firm. Pacific Dragon's 2008 and 2009 financial statements are audited by Heilongjiang Huaxin CPA Firm. Xinjiang Agritech's 2008 and 2009 financial statements are audited by Xinjiang Runtong CPA Firm. Anhui Agritech's 2008 and 2009 financial statements are audited by Bengbu Tianyi CPA Firm.

- Under PRC law, filing false tax documents is a crime subject to severe criminal and civil penalties, including imprisonment.[7]

46. Additionally, Chinese Generally Accepted Accounting Principles ("PRC GAAP") and U.S. Generally Accepted Accounting Principles ("US GAAP") are substantially the same. In particular for revenue recognition for sales of goods, US GAAP, PRC GAAP and CAGC's stated revenue recognition policy are the same.

47. There are no significant differences between PRC GAAP and US GAAP with respect revenue recognition. Authoritative bodies have specifically noted that there are no differences between PRC GAAP and GAAP.

48. The Committee of European Securities Regulators, in a paper entitled CESR's advice on the equivalence of Chinese, Japanese and US GAAPs (2007), noted that there were no significant differences between US GAAP and International Financial Reporting Standards ("IFRS"). Pg. 25, at 2nd entry on page.

49. There are no significant differences between IFRS and Chinese GAAP on revenue recognition. *Id.* at 35, 6th entry on page. Thus, transitively, there are no significant differences between PRC GAAP or US GAAP on revenue recognition.

50. The law firm K & L Gates LLP has represented to the U.S. Securities & Exchange Commission in

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[7] Article 201 of the Criminal Law of PRC; Article 63 of the Law of PRC Concerning the Administration of Tax Collection.

an October 27, 2010 letter that: "The basic accounting principles and practice of Chinese GAAP are similar to US GAAP. There are no substantial differences between Chinese GAAP and U.S. GAAP."

51. Thus, there are no significant differences between US GAAP and PRC GAAP that can explain the differences in CAGC's SAIC financial statements and those it filed with the SEC.

52. The 2009 Q3 10-Q describes its revenue recognition policy as:

> Revenue Recognition. Our revenue recognition policies are in compliance with Staff Accounting Bulletin 104. Sales revenue is recognized at the date of shipment to customers when a formal arrangement exists, the price is fixed or determinable, the delivery is completed, no other significant obligations of our Company exist and collectibility is reasonably assured. Payments received before all of the relevant criteria for revenue recognition are satisfied are recorded as unearned revenue. Our revenue consists of invoiced value of goods, net of a VAT. No product return or sales discount allowance is made as products delivered and accepted by customers are normally not returnable and sales discounts are normally not granted after products are delivered

53. CAGC's 2009 10-K describes its revenue recognition policy as:

> Sales revenue is recognized at the date of shipment from the Company's facilities to customers when a formal arrangement exists, the price is fixed or determinable, the delivery is completed,

ownership has passed, no other significant obligations of the Company exist and collectibility is reasonably assured.

54. The Chinese accounting standard governing revenue recognition for L&L's PRC subsidiaries, ASBE 14, is similar. It states:

Chapter II Revenue from Selling Goods Article 4. No revenue from selling goods may be recognized unless the following conditions are met simultaneously:

(1) The significant risks and rewards of ownership of the goods have been transferred to the buyer by the enterprise;

(2) The enterprise retains neither continuing management involvement to the degree usually associated with ownership, nor effective control over the goods sold;

(3) The relevant amount of revenue can be measured in a reliable way;

(4) The relevant economic benefits associated with the transaction will flow to the enterprise; and

(5) The relevant costs incurred or to be incurred can be measured in a reliable way.

55. Therefore, CAGC's 2009 Q3 10-Q is false and materially misleading.

B. CAGC's 2009 10-K is False and Materially Misstated

56. On April 1, 2010, the Company issued its fiscal 2009 annual report on form 10-K ("2009 10-K")

containing false and misleading financial statements for fiscal years 2008 and 2009.

57. The false and misleading 2009 10-K was signed by defendants Chang, Tang, Teng, Bennett, Dai, Zhang, Law and Wang. Defendants Chang and Tang signed the accompanying SOX certifications, attesting to the accuracy of CAGC's financial statements.

58. The 2009 10-K was false and materially misstated because: i) It materially misstated the Company's revenue and net income for fiscal year 2008 and 2009; and ii) It concealed material related party transactions.

1. CAGC Kept Two Materially Different Sets of Books: The Financial Statements CAGC Filed with Chinese Authorities Report a Tiny Fraction of the Revenue and Income contained in the Financial Statements CAGC Filed with the SEC

59. The revenue and net income reported by CAGC with the PRC SAIC and SAT for fiscal 2008 and 2009 are substantially less than those reported by CAGC with the SEC.

60. For fiscal 2008, the Company reported $45.24 million net revenue and $9.83 net income to the SEC. However, the revenue it reported to the PRC SAIC and SAT was no more than $3 million, with a net loss of more than ($1.88) million.

61. CAGC overstated revenue by at least 1,444% for fiscal 2008. It fabricated a profitable fiscal year

for 2008 while the Company was in fact losing money.

(In USD million)	SEC 2008	SAIC 2008	SAT 2008	Amount of Overstatement from SAIC to SEC	SAIC Amount as % of SEC
Net Revenue	$45.24	$2.93	$2.4	$42.31	6.48%
Net Income	$9.83	($1.88)	($2.03)	$11.71	n/a

62. For fiscal 2009, the Company reported $76.13 million net revenue and $6.17 net income to the SEC. However, CAGC reported revenue to the PRC SAIC and SAT that was no than $7.6 million, with net income of less than $1 million.

63. CAGC overstated revenue by at least 900% and overstated net income by at least 536% for fiscal 2009.

(In USD million)	SEC 2008	SAIC 2008	SAT 2008	Amount of Overstatement from SAIC to SEC	SAIC Amount as % of SEC
Net Revenue	$76.13	$7.02	$7.59	$69.11	9.22%
Net Income	$6.17	$0.97	$0.93	$5.2	15.72%

64. CAGC's fraudulent revenue reporting has also been verified by Plaintiff's investigators' site visits to CAGC's factories.

65. According to Plaintiffs' investigator, CAGC subsidiary Beijing Agritech is an idle factory with no

significant operation.[8]

- Plaintiffs' investigators visited Beijing Agritech's factory in Pinggu, Beijing on a weekday in early June, 2011. The investigators found no evidence of operations at the factory. The door was locked. They did not see any movement of workers or machines through the window. There were no trucks or vehicles entering or exiting.

- When the investigators inquired to the gatekeepers about meeting with or talking to the sales department, they were refused entry to the factory. Nor would the gatekeepers provide any contact information for factory management. The two gatekeepers said currently no officer or manager was in the factory and no one was expected in the factory for another month and that the gatekeepers were currently the only persons in charge of the whole factory.

- The investigators also visited the local government department that supervises and regulates CAGC's (and that factory's) business. The department is known as the Administrative Committee of Beijing Xinggu Economic Development Zone. This is the government administrative organ that has responsibility for overall management of the economic zone

[8] Though CAGC did not disclose in its SEC filings about annual production of Beijing Agritech, it did confirm in its February 10, 2011 Letter to Shareholders that the factory in Beijing is fully operational.

> in which CAGC's factory resides.[9] Plaintiffs' investigator interviewed Mr. Yin, the director of Investment Invitation Section I under the Administrative Committee, and was told by him that Beijing Agritech rarely has any production. Its gate is locked all the time. The management has refused the Administrative Committee's several requests for routine site visits. Mr. Yin was also told by Beijing Agritech that this factory was not in operation.

66. For Anhui Agritech, CAGC released more than 10 pictures inside the factory in February 2011, in an effort to rebut the negative facts in the LM Report. Those pictures, however, show that the company did not have basic equipment, such as forklifts, necessary for operations. One picture showed that human laborers were used to move the 40kg (88lb.) fertilizer bags manually. Since this factory was reported to manufacture 100,000 tons of granular fertilizer annually, it means 37 workers have to move 2.5 million bags weighing 40kg each year (185 bags/day per person assuming they work 365 days a year), an

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[9] The Administrative Committee's duties include, but are not limited to, planning and overseeing the economic zone's construction and development, investment and business start-ups, coordination between the various departments for serving the business development, and daily supervision of enterprises that are operating in the zone. Thus the committee usually keeps the most comprehensive information of all enterprises operating in the zone.

impossible method of operation.[10]

67. As to Xinjiang Agritech, it was not incorporated until December 2008. According to LM Report, the Xinjiang Agritech plant is actually a warehouse, shared with two other companies and demonstrates no activity.

68. In summary, CAGC materially overstated it production.

69. In addition, financial statements filed by CAGC subsidiary Pacific Dragon with local SAIC show its revenue for 2008 and 2009 was only $76,811 and $85,294, respectively, far less than the purported annual rent stated in SEC filed financial statements in $518,940.

70. It is a common sense that no company would spend six times its revenue for rent expenses.

71. Similarly, the financial statements filed by CAGC subsidiary Anhui Agritech with the local SAIC show its revenue for 2009 was only $77,941, far less than the purported annual rent of $432,900 reported in CAGC's SEC filings.

72. As shown by the discrepancy between the PRC SAIC revenue, income and expenses, CAGC has been keeping two materially different sets of books, one for the PRC authorities and one for the SEC.

2. Related Party Transactions

73. The 2009 10-K was false and misleading also

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[10] An educated estimate based on CAGC's total employees and production capacity of each subsidiary. This assumes a bag is moved only once following production.

because it concealed related party transactions with CAGC's CEO Chang.

74. CAGC's third largest supplier - Shenzhen Hongchou Technology Company Ltd. ("Shenzhen Hongchou") was 90% owned by CAGC CEO, President, Secretary and Chairman of the Board Defendant Chang at all relevant times until at least January 5, 2011, when he claims to have transferred his shares to another individual Haibo Li.[11]

75. US GAAP, Statement of Financial Accounting Standards ("SFAS") and SEC regulations required the Company to disclose all material related party transactions.

76. Statement of Financial Accounting Standards ("SFAS") No. 57 and No. 850 provide that a public company's "[f]inancial statements shall include disclosures of material related party transactions." SFAS No. 57 ¶ 2; 850-10-50-1.

77. "Related party transactions" include those between "an enterprise and its principal owners, management, or members of their immediate families" and those between a company and its "affiliates." SFAS No. 57 ¶ 1; 850-10-05-3. "Affiliate" includes any company that is under common control or management with the public company. SFAS No. 57 ¶ 24(a, b); 850-10-20.

78. Disclosures of related party transactions shall

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[11] Perhaps not coincidentally, Ms. Haibo Li's mother is the owner of Harbin Hai Heng Chemical Dist. Co., another principal supplier to CAGC (supplying 17% of CAGC's raw materials).

include (a) the nature of the relationship involved, (b) a description of the transactions for each period for which income statements are presented and such other information necessary to an understanding of the effects of the transactions on the financial statements, (c) the dollar amount of transactions for each of the periods for which income statements are presented, and (d) amounts due from or to related parties as of the date of each balance sheet presented and, if not otherwise apparent, the terms and manner of settlement. SFAS No. 57 ¶ 2; 850-10-50-1.

79. PRC GAAP is substantially the same as GAAP as they both require disclosure in the financial statements of related party transactions. The definition of related parties is the materially the same as SFAS 57. A translated copy of ABSE 36 is attached hereto as Ex. 1.

80. SEC Regulations also require disclosure of related party transactions. SEC Regulation S-K ("Reg. S-K") (together with the General Rules and Regulations under the Securities Act of 1933 ["Securities Act"] and the Exchange Act and the forms under these Acts) states the requirements applicable to the content of the non-financial statement portions of the annual reports on form 10- K, quarterly reports on form 10-Q and proxy statements on from 14A. (See, Reg. SK, §229.10).

81. Reg. S-K at Section 229.404, Item 404, required, at all times during the Class Period, that the Company "[d]escribe any transaction, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, in which the regis-

trant was or is to be a participant and the amount involved exceeds $120,000, and in which any related person had or will have a direct or indirect material interest."

82. Reg. S-K required the disclosure of detailed information concerning related party transactions exceeding $120,000, including the names of the "related person" or entity participating in the transaction, and the amounts of the transaction.

83. Reg. S-K Section 229.303, Item 404 (b)(1)(6) also mandates disclosure of any other relationships that the registrant is aware of between the nominee or director and the registrant that are substantially similar in nature and scope to those relationships listed in paragraphs (b)(1) through (5).

84. A "related person" is defined by Reg. S-K as including any director or executive officer of the Company, any nominee for director, or any immediate family member of a director or executive officer of the registrant, or of any nominee for director or any 5% or greater shareholder

85. In its May 14, 2009 10-Q, CAGC attached a contract dated December 8, 2009 between CAGC's subsidiary Pacific Dragon Fertilizer Co., Ltd. and Shenzhen Hongchou in which CAGC's subsidiary promised to purchase 26.9 million RMB ($4.0 million) of raw materials from Shenzhen Hongchou.[12]

86. According to the 2009 10-K, CAGC purchased 15% and 12% of its raw materials from Shenzhen

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[12] The contract is attached and incorporated by reference herein.

Hongchou in fiscal 2009 and 2008.

87. CAGC, however, did not disclose that 90% of Shenzhen Hongchou's shares were owned by CAGC CEO, President, Secretary and Chairman defendant Chang and that the above purchases were related party transactions.

88. Shenzhen Hongchou's SAIC filings show that Chang has owned 90% of its shares since August, 2004, while Ms. Haibo Li owned the remaining 10%.

89. In addition, Haibo Li's sister is a branch manager for Pacific Dragon, the CAGC subsidiary that signed the related party contract with Shenzhen Hongchou.

90. The SAIC filings also show that Shenzhen Hongchou's annual revenue was only $4,822.00 (RMB 33,269.23) in fiscal 2008, substantially less than CAGC's purported purchases from it.

91. Notably, CAGC reported in the 2009 10-K that "We purchase the majority of our raw materials from suppliers located in the PRC and use suppliers that are located in close proximity to our manufacturing facilities, which helps us to contain our cost of revenue." Shenzhen Hongchou, however, is not close to Pacific Dragon Fertilizer Co., Ltd. or to any of CAGC's subsidiaries. The closest CAGC subsidiary to Shenzhen Hongchou is Anhui Agritech, which is more than 1,300 km (808 miles) away. Pacific Dragon is more than 3,000 km (1,864 miles) from Shenzhen Hongchou.

92. The only reason for CAGC to choose Shenzhen Hongchou as its major supplier is to personally

benefit CEO, President, Secretary and Chairman of the Board defendant Chang.

3. CAGC's Other Suppliers Raise Serious Questions

93. According to CAGC's 2009 10-K, Beijing Zhongxin Chemical Technology Development Co., ("Beijing Zhongxin") was its largest supplier. CAGC purchased 18% and 33% of its raw materials from it in fiscal years 2009 and 2008, respectively. On December 2, 2008, CAGC's subsidiary Pacific Dragon Fertilizer Co., Ltd. signed a contract to purchase 59.6 million RMB ($8.7 million) of raw materials (fulvic acid) from Beijing Zhongxin.[13]

- After extensive government database searches and website searches in all possible transliterated Chinese names, Plaintiffs' counsel's investigator could not find such company.[14] Plaintiffs believe Beijing Zhongxin does not exist or if it does exist in some form, it is a non-operational shell company.

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[13] The contract is attached and incorporated by reference herein.

[14] LM Report also questioned CAGC's mysterious suppliers because those companies "cannot be found in any directory under possible Chinese names that would correspond to the transliterated names or under the alphabetic names." However, in its response, CAGC still did not disclose the suppliers' Chinese names. It only referred to the link of its SEC filings where only English names were disclosed. It appears defendants did not disclose the Chinese names because one of the suppliers was owned by CEO/Chairman/President Chang and he did not want to be discovered, while the other supplier does not exist.

- If Beijing Zhongxin does exist, it should be an important and well-known player in the market for fertilizer raw materials since it has millions of dollars in annual sales. It is unlikely that CAGC is its only customer. Yet, when Plaintiff's counsel's investigator interviewed managers at Beijing Dahua Fertilizer Co., Ltd. and Beijing Aojia Fertilizer Co., Ltd., two well-known fertilizer manufacturers in Beijing, they stated that they are quite familiar with the industry, but neither of them has ever heard of Beijing Zhongxin.
- Therefore, Plaintiffs' investigator believes that Beijing Zhongxin does not exist and may be a front to siphon funds from CAGC.

94. According to CAGC's 2009 10-K, Harbin Hai Heng Chemical Distribution Co., Ltd., ("Harbin Hai Heng") was its second largest supplier. On December 5, 2008, CAGC's Pacific Dragon subsidiary signed a contract with Harbin Hai Heng to purchase 43.4 million RMB ($6.0 million) of raw materials from Harbin Hai Heng.[15] CAGC purchased 17% and 12% of raw materials from Harbin Hai Heng in fiscal 2009 and 2008, respectively.

- However, Harbin Hai Heng's PRC SAIC records show that this company did not participate in the mandatory annual inspection for fiscal year 2008 and 2009, implying that it has been a non-active business since 2007. Failing to file the annual inspection will not only

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[15] The contract is attached and incorporated by reference herein.

bring substantial penalties, but also the risk of revocation of the entity's business license.[16] Without a business license, a company cannot conduct any business in the PRC or even maintain a bank account.

- Harbin Hai Heng is a shell company. According to a credit report issued by Qingdao Intercredit, a reputable credit reporting agency in China, Harbin Hai Heng has no known phone number, no website, no information obtainable online and no determinable business operations. These facts have also been verified by Plaintiffs' investigator through extensive database searches.

- Furthermore, Harbin Hai Heng is owned by Guirong Yin who is the mother of Ms. Haibo Li, Chang's business partner in Shenzhen Hongchou, the third largest supplier of CAGC -- which was 90% owned by Chang until January 2011 when Chang transferred his 90% interest to Haibo Li. Haibo Li's sister is a branch manager for CAGC subsidiary Pacific Dragon which signed the $4.0 million contract with Shenzhen Hongchou. Defendant CEO Chang's full relationship with the Li family is not yet known, but it is clearly deep.

95. According to CAGC's 2009 10-K, Langfang Tong Chuang Industrial and Trading Company Ltd ("Langfang Tong Chuang") was its fourth largest supplier. CAGC purchased 13% and 11% of its raw

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[16] PRC "Measures for the Annual Inspection of Enterprises" issued on February 24, 2006, Article 19.

materials in 2009 and 2008 year, respectively.

- Langfang Tong Chuang's PRC SAIC records show that this company's business scope is limited to "sales of paper, daily grocery, iron powder, construction materials, steel, auto parts, and plastic products and machining." None of CAGC's reported purchases of nitrogen, phosphorus and kalium or any similar chemical material is included within the scope of allowable business operations.
- According to PRC regulations, a company's registered business scope is determined by its Articles and monitored by local authorities. A company is not allowed to conduct any business beyond the registered scope without amendment to its Articles and SAIC registration, unless specifically approved by the SAIC.[17]
- Langfang Tong Chuang's SAIC records do not show any approval for the manufacture, sale or distribution of raw materials for fertilizer.
- Furthermore, its SAIC filings show that the company's revenue was $208,370 and $216,350 for the fiscal year 2009 and 2008, respectively,[18] substantially less than CAGC's purported purchase from it.

96. There is no plausible legitimate business ex-

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[17] Company Law of the People's Republic of China, Article 11.

[18] Exchange rate for 2008 is RMB 6.9 : USD 1, for 2009 is RMB 6.8 : USD 1.

planation for CAGC's payments to Beijing Zhongxin, Harbin Hai Heng and Langfang Tong Chuang as these three purported suppliers clearly did not provide raw materials to CAGC in the amounts reported by CAGC.

97. Furthermore, because operating capital is very scarce in China, it is not the general business practice to provide suppliers with large cash advances. Yet, CAGC made huge cash advances to its suppliers for the future purchase of raw materials. As of December 31, 2009 and 2008, total cash advances made to the four suppliers amounted to $25.35 million and $10.8 million, respectively.

V. THE TRUTH ABOUT CAGC'S FINANCIAL STATEMENTS SLOWLY ENTERED THE MARKET THROUGH PIECEMEAL DISCLOSURES AND MATERIALIZED CAUSING THE PRICE OF CAGC STOCK TO DROP

98. On February 3, 2011, the research firm LM Research published a report asserting that China Agritech was a fraud.

99. The Report, asserted that the Company's financial statements were fraudulent. It alleged revenue was overstated and that the company's factory plants are idle.

100. The adverse news disclosed by the LM Report caused the Company's stock to decline from its closing price of $10.78/share on February 2, 2011 to $9.12/share before closing at $9.85/share on February 3, 2011 —a day over day decline of 8.63%.

101. The next day, CAGC vigorously denied the allegations made in the LM report. The response only helped recovery of the stock price by $0.14/share or 1%. Ironically, Charles Law, one of CAGC's Board of Directors, resigned on that day.

102. CAGC continued to deny the allegations of fraud publicly. Yet, as a result of the allegations of fraud, several analyst firms downgraded CAGC, causing a selloff and declines in its share price.

103. On February 7, 2011, analyst firm Brean Murray downgraded CAGC. Also on February 7, 2011, YQV downgraded CAGC to hold and Rodman & Renshaw placed CAGC's rating under review as a result of the allegations of fraud in the LM Report.

104. On February 8, 2011, analyst firm Chardan Capital lowered its price target for CAGC from $8 to $5. And based on a lack of credibility in management rated CAGC a sell.

105. On February 15, 2011 Bronte Capital issued a scathing report presenting additional facts indicating that CAGC was a fraud and could not possibly have produced the revenue it claimed in its financial statements.

106. As a result of the Bronte Capital report, CAGC stock price dropped from $9.21/share on February 5, 2011 to $7.44/share on February 16, 2011 – more than 19% - on extremely heavy volume.

107. A month later, on March 13, 2011, CAGC announced formation of a Special Committee of its Board of Directors ("the Special Committee") to investigate the allegations of fraud made by third par-

ties.

108. The next day CAGC dismissed Ernst & Young Hua Ming as the Company's independent auditor citing the following reasons as disclosed in the 8-K filed on March 13, 2011:

> "On November 13, 2010, China Agritech, Inc. (the "Company") appointed Ernst & Young Hua Ming ("E&Y") as its independent registered public accounting firm. On March 14, 2011, the Company terminated the services of E&Y.
>
> ...On December 15, 2010, E&Y provided a letter to the Audit Committee of the Board of Directors of the Company (the "Audit Committee") describing certain matters that, if not appropriately addressed in a timely manner, may result in audit adjustments, significant deficiencies or material weaknesses and/or delays in meeting the 10-K filing deadline. ... On March 8, 2011, E&Y informed the Audit Committee that it had encountered additional issues and concerns that, in E&Y's view, required additional information and procedures, **including the initiation of an independent investigation, in order to verify certain transactions and balances recorded on the Company's financial statements and records for the year ended December 31, 2010. E&Y also orally advised the Audit Committee that it may not be able to rely on management's representations based on the issues identified E&Y informed the Company that the issues identified in performing their audit may, if further investigated, have adverse implications for the financial state-**

> **ments covering the three quarterly reports filed by the Company on Form 10-Q during 2010**, and advised the Audit Committee to inform the predecessor auditors of the issues identified, so that they can assess the impact on prior financial reports."

[Emphasis added]

109. Thus, CAGC had concealed that E &Y had identified serious problems with its financial statements as early as December 15, 2010 and had informed CAGC's board that an internal investigation was necessary.[19] CAGC had misled investors to believe that the investigation was not connected at all with E&Y's audit and concealed that E &Y had demanded the internal investigation as a result of serious issues with CAGC's financial statements. But CAGC failed to correct the problems with the financial statements, failed to provide verification for certain transactions – prompting **"E&Y ... orally advise[] the Audit Committee that it may not be able to rely on management's representations based on the issues identified."**

110. Thus, the March 14, 2011 press release shocked investors by disclosing that Defendants had concealed that E&Y had insisted that the board commence an investigation and that Defendants had concealed that the failure of CAGC to file its 10-K timely was a result of accounting problems that E& Y had identified back in December 2010 –leading to

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[19] After retaining a law firm and accounting firm to conduct the investigation for more than four months, CAGC has still not disclosed the results of the investigation.

the investigation. Thus, investors learned for the first time that E& Y had identified problems with CAGC's financial statements. This news crushed any remaining credibility CAGC management had because E&Y stated it could not rely on management's representations.

111. Also on March 14, 2011, the Nasdaq delisted and halted trading in CAGC stock with its share price at $6.88/share.

112. Then, Defendant Wang, a member of the Company's Board of Directors, as well as a member of the special committee of the Board of Directors, resigned without a word.

113. On May 20, 2011, CAGC stock opened for trading on the pink sheets at $1.50/share having dropped $5.38/share from its previous pre-halt trading price. CAGC shares traded as low as $1.00/share before closing for trading at $3.80/share. The next trading day, CAGC shares dropped another $0.80/share to $3.00/share on heavy trading.

114. The share price decline on May 20 and 23 was a direct result of the negative news concerning E&Y disclosed on March14, 2011 and the resignation of defendant Wang as a director, who had served as a representative of Carlyle – further eliminating any credibility for CAGC.

115. CAGC shares currently are valued at $1.55/share as of June 21, 2011.

116. Thus investors have seen the value of their shares drop from $10.78/share on February 2, 2011 when the fraud was first disclosed to $1.55/share as

of June 21, 2011 – a loss of $9.23/share.

VI. ADDITIONAL FACTS SUGGESTIVE OF SCIENTER

A. Defendants' Stock Sales Demonstrate Scienter

117. Defendants have also profited handsomely from sales of CAGC stock. This demonstrates that defendants had a strong profit motive to inflate the stock price by overstating its financials.

118. CAGC filed a prospectus with the SEC on May 4, 2010 registering for sale large amounts of CAGC stock owned by Defendants. While it is not clear exactly how much stock each defendants sold pursuant to the Registration Statement, Defendants were each motivated, and intended, to sell CAGC stock and earn tens of millions in profits.

119. Scienter is also supported by fact that CAGC was able to conduct an equity offering to take advantage of CAGC stock's artificially inflated price. In May, 2010, CAGC sold over 1.243 million shares of its stock at $16.10/share raising approximately $21 million; along with the exercise of warrants, CAGC raised an additional $10 million.

120. Defendants Teng, Tang and Zhu all profited handsomely from sales of CAGC stock during the period of the fraud. A list of their specific CAGC share sales are as follows.

Name	Position	Date	Amount	Proceeds
Xiaorong Teng	Director/ COO	13-May-10	10,000	$169,400

		26-May-10	10,000	$127,846
		01-Jun-10	7,200	$92,835
		23-Jul-10	31,900	$384,921
		26-Jul-10	20,000	$251,064
		10-Feb-11	100	$1,294
		11-Feb-11	11,668	$151,149
		12-Feb-11	8,232	$106,856
			TOTAL	**$1,285,364**
Yau-Sing Tang	CFO	12-May-11	10,000	$153,000
		13-May-11	5,000	$83,000
		07-Jun-10	5,000	$56,920
		02-Aug-10	10,000	$130,000
		03-Aug-10	10,000	$140,334
		06-Aug-10	10,000	$150,544
		29-Dec-10	5,000	$62,500
		30-Dec-10	5,000	$65,000
		06-Jan-10	5,000	$67,500
			TOTAL	**$908,798**
Mingfang Zhu	COO	18-May-10	1,900	$29,640

		19-May-10	28,100	$363,033
		27-May-10	20,000	$260,208
		04-Jun-10	20,000	$240,290
			TOTAL	$893,172

B. CAGC's Misconduct Was So Serious that NASDAQ Delisted and the Company's Securities from Trading And the SEC Revokes CAGC's Registration

121. CAGC's misconduct was evidently serious enough that on April 12, 2011, it received a letter from NASDAQ stating that:[20]

- "the staff of Nasdaq believes that the continued listing of the Company's securities on Nasdaq is no longer warranted based on public interest concerns and the Company's failure to file its 2010 Form 10-K on time (the "Nasdaq Letter").
- "the staff of Nasdaq believes **that the serious concerns raised by our former auditors, Ernst & Young Hua Ming ("E&Y"), relating to issues surfacing in the audit process rise to the level of a public interest concern**, ...

122. On October 17, 2012 the SEC issued an order revoking the registration of CAGC's common

[20] CAGC disclosed the letter in its 8-K filed with the SEC on April 18, 2011.

stock "for the protection of investors."

C. The Revolving Door for CAGC's Auditors

123. CAGC has changed auditors four times in three years. Since 2008, the Company has had four independent auditors.

124. Kabani & Company, Inc., ("Kabani") a Los Angeles-based accountancy, audited the Company's 2007 financials. Kabani was the accountancy that audited the notoriously fraudulent Bodisen Biotech, an organic fertilizer company that was delisted in 2007, and China Green Agriculture (CGA), a firm which was also disclosed having falsely reported its results to U.S. investors.

125. In April 2008, CAGC terminated Kabani and retained Crowe Horwath LLP as its auditor. CAGC then terminated Crowe Horwath and retained E&Y in November, 2010.

126. However, CAGC fired E&Y four months later due after E&Y identified issues in the 2009 audit, and stated it could no longer rely on representations of CAGC management.

127. On April 12, 2011, CAGC announced it had hired Simon & Edward LLP as its new independent auditor to replace E & Y. Still, CAGC has not produced audited financial statements for fiscal year 2010.

D. The SEC has Warned of Reverse Merger Companies Such as CAGC

128. Chinese reverse mergers have been a magnet for disreputable stock promoters, leading the SEC to issue warnings about investing in companies

like CAGC.

129. Shielded by the geographic distance of thousands of miles and operating under a regulatory framework that is a world apart from the SEC's oversight, RCM companies have few incentives to provide complete and accurate disclosures to American investors. An August 28, 2010 article in *Barron's* by Bill Alpert and Leslie P. Norton entitled, "Beware This Chinese Export," discusses the enforcement problems that American regulators face when dealing with Chinese companies that trade on U.S. exchanges through RCMs. The article states that "[t]he SEC's enforcement staff can't subpoena evidence of any fraudulent activities in China, and Chinese regulators have little incentive to monitor shares sold only in the U.S."

130. U.S. regulators have finally begun to take notice of the manipulation and fraud endemic in RCMs. The SEC has recently established a task force to investigate investors' claims regarding the impropriety and fraud of RCMs trading on the U.S. markets. SEC Commissioner Luis A. Aguilar (the "Commissioner") discussed Chinese reverse mergers and the process of "backdoor registration," stating:[21]

> In the world of backdoor registrations to gain entry into the U.S. public market, the use by Chinese companies has raised some unique issues, even compared to mergers by U.S. companies. Two important ones are:

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[21] Text of the entire speech is available at http://sec.gov/news/speech/2011/spch040411laa.htm#P7943025.

- First, there appear to be **systematic concerns with the quality of the auditing and financial reporting; and**

- Second, even though these companies are registered here in the U.S., there are **limitations on the ability to enforce the securities laws, and for investors to recover their losses when disclosures are found to be untrue, or even fraudulent.**

I am worried by the systematic concerns surrounding the quality of the financial reporting by these companies. In particular, according to a recent report by the staff of the Public Company Accounting Oversight Board (PCAOB), U.S. auditing firms may be issuing audit opinions on the financials, but not engaging in any of their own work. Instead, the U.S. firm may be issuing an opinion based almost entirely on work performed by Chinese audit firms. If this is true, it could appear that the U.S. audit firms are simply selling their name and PCAOB-registered status because they are not engaging in independent activity to confirm that the work they are relying on is of high quality. This is significant for a lot of reasons, including that the PCAOB has been prevented from inspecting audit firms in China.

131. On June 9, 2011, the SEC issued an Investor Bulletin warning investors about investing in companies that enter U.S. markets through RCM "...there have been instances of fraud and other abuses involving reverse merger companies." "Given the potential risks, investors should be especially

careful when considering investing in the stock of reverse merger companies," said Lori J. Schock, Director of the SEC's Office of Investor Education and Advocacy.

VII. PLAINTIFFS' CLASS ACTION ALLEGATIONS

132. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a Class consisting of all persons who purchased the common stock of CAGC during the Class Period and who were damaged thereby. Excluded from the Class are Defendants, the present and former officers and directors of CAGC and any subsidiary thereof, members of any defendants' immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

133. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, CAGC's stock was actively traded on the NASDAQ at all times during the Class Period.

134. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are at least hundreds, if not thousands, of members in the proposed Class. Members of the Class may be identified from records maintained by CAGC or its transfer agent and may be notified of the pendency of this action by mail, using a form of notice customarily used in securities class actions.

135. Plaintiffs' claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

136. Plaintiffs will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

137. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the federal securities laws were violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, and financial performance of CAGC; and
- to what extent the members of the Class have sustained damages and the proper measure of damages.

138. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to redress individually the wrongs done to them. There

will be no difficulty in the management of this action as a class action.

VIII. RELIANCE PRESUMPTION FRAUD ON THE MARKET

139. Plaintiffs are permitted a presumption of reliance because CAGC stock was traded in an efficient market during the Class Period. At all relevant times, the market for CAGC common stock was an efficient market for the following reasons, among others:

- CAGC stock met the requirements for listing, and was listed and actively traded on the on the NASDAQ market (under ticker symbol "CAGC"), a highly efficient and automated market;
- On average there were 19.3 million shares of the Company's common stock issued and outstanding during the Class Period. The public float (shares not held by insiders/defendants) was 11.8 million shares on average during the Class Period;
- During the class period, on average, 4.5 million shares of CAGC common stock were traded on a weekly basis. Approximately 38% of the public float, and 23% of all outstanding shares, were bought and sold on a weekly basis, demonstrating a very strong presumption of an efficient market;
- As a regulated issuer CAGC filed with the SEC periodic public reports and was eligible (and did file) S-3 registration statements with

the SEC during the Class Period (February 9, 2010, May 12, 2010, April 16, 2010, and October 19, 2010);

- CAGC conducted a $20 million offering of shares during the Class Period, which attracted media coverage and investor interest;
- CAGC regularly communicated with public investors via established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting service;
- There were more than 2,100 news stories, and analyst reports, and other media coverage regarding CAGC during the Class Period;
- CAGC was followed by several securities analysts employed by major brokerage firms including Brean Murray, Rodman and Renshaw, LM Research, Bronte Capital, and Chardan Capital (among others), who wrote reports that were distributed to the sales force and certain customers of their respective brokerage firms during the Class Period. There were at least 125 investment reports published by analysts and others during the Class Period, which disseminated information about CAGC to investors;
- On average 28 NASD member firms were active market-makers in CAGC stock at all times during the Class Period;

- Unexpected material news about CAGC was rapidly reflected in and incorporated into the Company's stock price during the Class Period; and
- There is a strong statistically significant cause and effect relationship between the release of new company specific information and changes in CAGC's stock price. For example:
  - On December 23, 2009, CAGC disclosed that it had achieved its 2009 sales target of 80,000 metric tons of organic granular fertilizer. This positive news caused an increase in CAGC's stock price of $2.12/share. The CAGC stock-price increase was statistically significant at the 99% confidence level.
  - On February 8, 2010, CAGC released FY10 revenue guidance of approximately $114M vs. consensus estimates of $69.46M. This positive news caused an increase of CAGC's stock price of $1.20/share. The CAGC stock-price increase was statistically significant at the 95% confidence level.
  - On August 12, 2010, CAGC announced earnings per share for the second quarter 2010 that exceeded the analyst consensus estimate. This positive news caused an increase of CAGC's stock price of $2.97/share. The CAGC stock-price increase was statistically significant at the 99% confidence level.

- On September 8, 2010, an analyst downgraded shares of CAGC from Neutral to Sell. This negative news caused a decrease of CAGC's stock price of $2.59/share. CAGC's stock-price decrease was statistically significant at the 99% confidence level.
- On November 10, 2010, CAGC announced earnings per share that missed the analyst consensus estimate. This negative news caused CAGC's stock price to decrease $3.26/share. CAGC's stock-price decrease was statistically significant at the 99% confidence level

AFFFILIATED UTE

140. With respect to defendants failure to disclose material related party transactions, plaintiffs are permitted a presumption of reliance under the U.S. Supreme Court's decision in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972). All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered the omitted related party transactions important in deciding whether to purchase CAGC stock.

141. Here, Plaintiffs need not prove that they relied on defendants' material omission of the related party transactions in purchasing CAGC stock, because under *Affiliated Ute*, the related party transactions are material facts, a plaintiffs are entitled to a presumption of reliance.

IX. FIRST CAUSE OF ACTION

Violation of Section 10(b) of The Exchange Act Against and Rule 10b-5 Promulgated Thereunder Against All Defendants

142. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

143. This cause of action is asserted against all Defendants.

144. During the Class Period, defendants carried out a plan, scheme and course of conduct which was intended to, and throughout the Class Period, did: (1) deceive the investing public, including Plaintiffs and other Class members, as alleged herein; and (2) cause Plaintiffs and other members of the Class to purchase and/or sell CAGC's securities at artificially inflated and distorted prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, individually and as a group, took the actions set forth herein.

145. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of CAGC as specified herein.

146. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of CAGC's value and performance and continued substantial growth,

which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about CAGC and its business operations and financial condition in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business that operated as a fraud and deceit upon the purchasers CAGC securities during the Class Period.

147. Each of the defendants' primary liability, and controlling person liability, arises from the following: (a) defendants were high-level executives, directors, and/or agents at the Company during the Class Period and members of the Company's management team or had control thereof; (b) by virtue of their responsibilities and activities as senior officers and/or directors of the Company, were privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (c) defendants enjoyed significant personal contact and familiarity with the other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and (d) defendants were aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

148. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for

the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing CAGC's financial condition from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants' false and misleading statements during the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by failing to take steps necessary to discover whether those statements were false or misleading.

149. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price for CAGC's securities was artificially inflated during the Class Period.

150. In ignorance of the fact that market prices of CAGC's publicly-traded securities were artificially inflated or distorted, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the Company's securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, Plaintiffs and the other members of the Class acquired CAGC's securities during the Class Period at artificially high prices and were damaged thereby.

151. At the time of said misrepresentations and

omissions, Plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiffs and the other members of the Class and the marketplace known the truth regarding CAGC's financial results and condition, which were not disclosed by defendants, Plaintiffs and other members of the Class would not have purchased or otherwise acquired CAGC securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices or distorted prices at which they did.

152. By virtue of the foregoing, the defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

153. As a direct and proximate result of the Defendants' wrongful conduct, Plaintiffs and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

154. This action was filed within two years of discovery of the fraud and within five years of Plaintiffs' purchases of securities giving rise to the cause of action.

X. SECOND CAUSE OF ACTION

Violation of Section 20(a) of The Exchange Act Against the Individual Defendants

155. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

156. This Second Claim is asserted against each of the Individual Defendants.

157. The Individual Defendants, acted as controlling persons of CAGC within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, agency, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of aspects of the Company's revenues and earnings and dissemination of information to the investing public, the Individual Defendants had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements that Plaintiffs contend are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiffs to be misleading prior to and/or shortly after these statements were issued, and had the ability to prevent the issuance of the statements or to cause the statements to be corrected.

158. In particular, each of these Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

159. As set forth above, CAGC and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint.

160. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act as they culpably participated in the fraud alleged herein. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company's common stock during the Class Period.

161. This action was filed within two years of discovery of the fraud and within five years of Plaintiffs' purchases of securities giving rise to the cause of action.

XI. JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- Determining that this action is a proper class action and certifying Plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure and Plaintiffs' counsel as Class Counsel;
- Awarding compensatory damages in favor of Plaintiffs and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action; and

- Such other and further relief as the Court may deem just and proper.

Dated: July 18, 2013

Respectfully submitted,

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APPENDIX G

Decision Denying Class Certification in *Smyth*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-03008-RGK (PJWx)	Date	September 26, 2013
Title	SMYTH et al. v. CHINA AGRITECH, INC. et al.		
Present: The Honorable	R. GARY KLAUSNER, U.S. DISTRICT JUDGE		

* * *

I. INTRODUCTION

On July 18, 2013, investor Kevin Smyth and a group consisting of Te Gyun Kim, Premium Alliance Investment Limited, San Chul Han, HSP Investment Limited, and Seung Ho Lee ("Kim Group") (collectively "Plaintiffs") filed an Amended Class Action Complaint ("Amended Complaint") against China Agritech, Inc. ("Agritech") and present and former members of the company's executive management team and board of directors ("Individual Defendants") (collectively "Defendants"). Plaintiffs allege violations of: (1) Section 10(b) of the Securities Exchange Act of 1934 ("1934 Act") and Securities and Exchange Commission Rule 10b-5 against Defend-

ants; and (2) Section 20(a) of the 1934 Act against Individual Defendants. The Amended Complaint is substantially similar to the complaint filed in this Court in *Dean v. China Agritech, Inc.*, CV 11-01331 RGK (PJW), which the Court dismissed on September 20, 2012 following a settlement by the named parties. Kim Group had earlier signed a lead plaintiff certification in Dean, but did not seek appointment as lead plaintiff until December 7, 2012, in *Smyth*. This action was transferred from the District of Delaware on April 19, 2013.

On December 7, 2012, Victor van de Reijt Holding BV, a third party, filed a motion in the District of Delaware for Appointment as Lead Plaintiff. That day, Plaintiff Kim Group also filed a Motion for Appointment as Lead Plaintiff. On August 5, 2013, Plaintiff Kim Group filed a Motion for Class Certification. On the same date, Defendant Agritech filed a Motion to Dismiss the Amended Complaint and a Motion to Strike the Class Allegations. Presently before the Court are the Motions for Appointment as Lead Plaintiff, Plaintiff Kim Group's Motion for Class Certification, and Defendant Agritech's Motion to Strike Class Allegations.

For the following reasons, the Court **DENIES** without prejudice both Motions for Appointment as Lead Plaintiff. The Court **DENIES** Plaintiff Kim Group's Motion for Class Certification. In light of the above, the Court removes Defendant's Motion to Strike Class Allegations from the calendar.

II. FACTUAL BACKGROUND

Plaintiffs are investors who purchased Agritech common stock between November 12, 2009 and March 11, 2011 ("Class Period"). Agritech is a holding company incorporated in the State of Delaware, with its principal place of business in Beijing, China. Agritech purports to manufacture and sell organic compound fertilizers and related agricultural products. Plaintiffs claim they purchased Agritech stock on the basis of revenue and net-income figures for the years 2008 and 2009. They assert that the net-income figures Agritech declared in mandatory filings with the Securities and Exchange Commission ("SEC") were false and fraudulent, and that Agritech substantiated these filings with false versions of audit certifications required under the Sarbanes-Oxley Act of 2002. Plaintiffs further claim that:

- Agritech overstated fiscal-year 2009 revenues by 900 percent and net income by 536 percent.
- Defendants maintained separate sets of financial records, reporting one set of figures to the SEC and another, generally less favorable set to the corresponding Chinese regulatory authority.
- Agritech engaged in at least one related-party transaction, purchasing significant quantities of supplies from a company that was 90 percent owned by Agritech's chief executive officer, Individual Defendant Yu Chang.

A series of negative analyst reports appeared in the media beginning on February 3, 2011, questioning Agritech's financial statements and its methods of operation. Subsequently, Agritech's share price fell from $10.78 at the beginning of the Class Period

to $6.88 on March 14, 2011, three days after the Class Period ended, when NASDAQ halted trading of Agritech common stock. By June 21, 2011, the share price for the delisted stock had declined to $1.55. Plaintiffs claim they sustained millions of dollars in losses as a result.

The Court considered a similar complaint in *Dean v. Agritech, Inc.* In that case, the Court denied Defendants' Motion to Dismiss on grounds that the *Dean* plaintiffs had adequately alleged a claim to relief. After the Court denied the *Dean* plaintiffs' Motion for Class Certification, the *Dean* parties settled.

III. JUDICIAL STANDARD

A. Motion for Class Certification

A plaintiff seeking class certification bears the burden of demonstrating that it has met all of the requirements for a class action under Federal Rules of Civil Procedure 23(a) and 23(b). *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). The Supreme Court has observed that Rule 23 "does not set forth a mere pleading standard" but requires an affirmative demonstration of compliance with the Rule's requirements. *Id.* Thus, the plaintiff must offer facts supporting each requirement, and the trial court may certify a class only after a "rigorous analysis." *Id.* Some courts equate this standard of analysis with the "preponderance of the evidence" standard. *See, e.g., Teamsters Local 445 Freight Div. Pension Fund v. Bombardier, Inc.*, 546 F.3d 196, 202 (2d Cir. 2008).

Rule 23(a) permits one or more members of a class to sue as representative parties on behalf of a

class only if: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). These threshold requirements are also known as (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997).

In addition to meeting the threshold requirements of Rule 23(a), a plaintiff must also satisfy at least one of the three requirements of Rule 23(b). Rule 23(b) provides that a class action may be maintained where: (1) prosecuting separate actions would create a risk of (a) inconsistent or varying adjudications, or (b) individual adjudications dispositive of the interests of other class members who are not parties to those adjudications; (2) the party opposing the class has refused to act on grounds that apply generally to the class; or (3) the court finds that questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b).

B. Motion to Strike

Federal Rule of Civil Procedure 12(f) provides that "the court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." When considering a

motion to strike, the court must view the challenged pleading in "the light more favorable to the pleader." *Clark v. State Farm Mut. Auto Ins. Co.*, 231 F.R.D. 405, 406 (C.D. Cal. 2005). The pleading will not be stricken unless it "can have no possible bearing upon the subject matter of the litigation." *Id.* (quoting *Cal. Dept. of Toxic Substances Control v. Alco Pac., Inc.*, 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002)). Moreover, a motion to strike under Rule 12(f) is an inappropriate mechanism for dismissing "some or all of a pleading." *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 974 (9th Cir. 2010). A party seeking such a determination should instead file a motion to dismiss under Rule 12(b)(6) or a motion for summary judgment under Rule 56. *Id.* Unless and until a court has determined that a class cannot be certified, even conclusory class allegations will survive a motion to strike. *See Clark*, 231 F.R.D. at 407 (where class allegations address each of the elements of Rule 23(a), relate to the subject matter of the litigation, and satisfy the requirements of Rule 12(f), even conclusory statements will suffice to defeat a motion to strike).

Federal Rule of Civil Procedure 23(d)(1)(D) provides an alternative vehicle for amending class allegations. The Rule provides that in putative class actions, courts may "require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly." Fed. R. Civ. P. 23(d)(1)(D). The advisory committee notes to the rule's predecessor, Rule 23(d)(4), suggest that striking class allegations is proper only after the court has determined that class treatment is fundamentally inappropriate. *See* 28 U.S.C. App., 7767 ("A negative determination [on

class certification] means that the action should be stripped of its character as a class action."); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 183 n.6 (1974) (Douglas, J., dissenting in part, citing advisory committee note). Thus, as with Rule 12(f), a Motion to Strike under Rule 23(d)(1)(D) is premature if the Court has not yet determined that class certification will never be possible or appropriate.

IV. DISCUSSION

A. Class Certification

Plaintiffs contend that they have met all the requirements for class certification. For the reasons outlined below, the Court finds that Kim Group has failed to satisfy the typicality and adequacy prerequisites of Rule 23(a). As a result, the Court need not determine whether Kim Group has also satisfied one of the three requirements of Rule 23(b). Accordingly, the Court denies Plaintiff Kim Group's Motion for Class Certification.

1. Kim Group Fails to Satisfy the Prerequisites of Rule 23(a)

For the Court to grant a motion for class certification, Plaintiffs must demonstrate that they satisfy Rule 23(a)'s four requirements: (1) numerosity, (2) commonality; (3) typicality; and (4) adequacy of representation. *Wal-Mart Stores*, 131 S. Ct. at 2548. The parties do not dispute that Kim Group satisfies the numerosity and commonality requirements. Defendant argues, however, that Kim Group has failed to offer facts sufficient to show either typicality or adequacy. Specifically, it asserts that Kim Group (1) is subject to unique defenses that render it atypical of

the class; and (2), has not demonstrated that it will vigorously prosecute this case on behalf of the class. The Court agrees and considers typicality and adequacy in turn.

i. Kim Group Has Failed to Establish Its Typicality Because It May Be Subject to a Unique Claim Preclusion Defense

A class representative may satisfy the typicality requirement if its claims or defenses are similar to those of the class, even if they are not identical. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019-20 (9th Cir. 1998). Typicality "refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." *Hanon v. Dataprod. Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (quoting *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 903 F.2d 176, 180 (2d Cir. 1990)). A proposed class representative's motion for class certification should not be granted "if there is a danger that absent class members will suffer if their representative is preoccupied with defenses unique to it." Id. The typicality inquiry "does not demand proof that a unique defense will ultimately defeat the class representative's claims. Instead, it asks only whether plaintiff is likely to be preoccupied with litigating the defense to the detriment of the class as a whole." *Cholakyan v. Mercedes-Benz USA, LLC*, 281 F.R.D. 534, 537 (C.D. Cal. 2012). *See also J. H. Cohn & Co. v. Am. Appraisal Assoc., Inc.*, 628 F.2d 994, 999 (7th Cir. 1980) ("[E]ven an arguable defense peculiar to the named plaintiff or a small subset of the plaintiff class may destroy the required typicality of the class as well as

bring into question the adequacy of the named plaintiff's representation.").

Defendant argues that Kim Group's prior relationship with the Dean plaintiffs may subject them to unique defenses, such as claim preclusion, that defeat typicality. Kim Group has failed to persuade the Court that unique defenses will not be a major focus of the litigation.

The claim preclusion doctrine acts to prevent the repeated litigation of a claim once a final judgment has been entered. *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008). As a general rule, the doctrine applies against parties to earlier actions, and does not preclude a nonparty to an earlier suit from bringing the same or a similar claim. *Id.* at 892-93. However, the Supreme Court has identified several exceptions to the general rule. Most relevant here, a nonparty may be bound by a judgment "if she 'assume[d] control' over the litigation in which that judgment was rendered." *Id.* at 895. Similarly, a named party bound by a judgment "may not avoid its preclusive force by relitigating through a proxy." *Id.* at 895. Thus, in this case, Kim Group may be bound by the *Dean* settlement—and by the Court's denial of class certification in that earlier case—if it "assumed control" over the *Dean* litigation. Likewise, the *Dean* plaintiffs may not avoid the preclusive force of the earlier settlement and judgment by relitigating through a proxy—on Defendant's theory, the Kim Group.

Defendant may be able to raise a claim preclusion defense on the basis that Kim Group, though a nonparty in *Dean*, controlled the earlier litigation. It is clear that the Kim Group was at least aware of, and

willing to participate in, the *Dean* litigation in 2011. The Kim Group signed Lead Plaintiff Certifications in connection with *Dean* but only submitted them in connection with this litigation. (Aronson Decl., Ex. 3.) The Kim Group constituents assert in each of these documents that they "have reviewed the complaint against [Agritech]" and that they are "willing to serve" as lead plaintiffs. (*See, e.g.*, Aronson Decl., Ex. 3, "Te Gyun Kim Lead Plaintiff Certification" at ¶¶ 1, 3.) Because these certifications were filed in 2011, it is likely that the complaint that the Kim Group asserted it had read was the *Dean* complaint. The evidence that the Kim Group was aware of, and willing to participate in, the *Dean* litigation lends some preliminary factual support to Defendant's claim that Kim Group may be subject to a unique preclusion defense.

Other evidence provides additional support for Defendant's contention. As Defendant notes, the Amended Complaints in both cases contain several identically described findings by the same anonymous investigator. (*See, e.g.*, Pl.'s Am. Compl. at 14, *Dean et al. v. China Agritech, et al.*, No. 2:11-cv-01331-RGK-PJW (C.D. Cal. 2012) ("According to Plaintiffs' investigator, [Agritech] subsidiary Beijing Agritech is an idle factory with no significant operation."); *Smyth* Amended Complaint at 16 (identical statement).) Significantly, the Kim Group acknowledges that this investigator is its "agent." (Pl.'s Mem. in Opp'n to China Agritech's Mot. to Dismiss at 17 ("... the investigator, retained by Plaintiff's counsel, is the plaintiff's agent.") Under common law principles, the sine qua non of agency is control. *See* Restatement (Third) of Agency § 1.01 (2006) ("Agency is

the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act"). If the anonymous investigator from both cases was subject to the joint control of both the *Dean* plaintiffs and the Kim Group, it raises legitimate questions about whether the two sets of plaintiffs shared control of other aspects of the *Dean* litigation. As *Taylor v. Sturgell* suggests, if the Kim Group exercised control over the earlier litigation, that control may preclude it from litigating claims against the Defendants in this case.

The evidence of shared control of the same anonymous investigator points to another possible theory of claim preclusion. On this second theory, the *Dean* plaintiffs, acting as principals of the Kim Group, may be seeking to relitigate their claims by using Kim Group as a proxy. In support of this theory, Defendant claims Kim Group based its class allegations partly on documents Defendants supplied during discovery in *Dean*, which the *Dean* plaintiffs never returned as required by their settlement. (Opposition at 6; *see also* Settlement Agreement at 5, *Dean v. China Agritech, et al.*, No. 2:11-cv-01331-RGK-PJW (C.D. Cal. 2012) ("*Dean* Settlement").) Thus, Defendant asserts, Kim Group may be acting as the Dean plaintiffs' proxy, and its claims would be precluded under Taylor.

Plaintiff Kim Group has not produced any facts that tend to rebut Defendant's contention that Kim Group is subject to a unique claim preclusion de-

fense. Instead, Defendant raises two legal arguments in opposition.

First, Plaintiff argues that *Taylor* is inapposite because Kim Group was not a named plaintiff in *Dean*. It is true that the Supreme Court has not specified "the showing required to establish that a nonparty to a prior adjudication has become a litigating agent for a party to the earlier case." *Taylor*, 553 U.S. at 906. And Plaintiff correctly notes that the Supreme Court has emphasized that a "mere whiff of tactical maneuvering will not suffice," and a defendant bears the ultimate burden of pleading and proving a claim-preclusion defense. *Id.* at 906-07. However, as described above, preclusion is appropriate "when a nonparty later brings suit as an agent for a party who is bound by a judgment." *Id.* at 895. A nonparty may also be bound by a judgment "if she 'assume[d] control' over the litigation in which that judgment was rendered." *Id.* Defendant's contentions about Kim Group fit squarely within these two exceptions to the general rule that only parties to a judgment are bound by it.

Second, Plaintiff argues that Defendant's allegations of collusion are purely speculative and that "a disabling unique defense cannot be manufactured on speculation." (Pl.'s Reply Mem. in Supp. of Mot. for Class Certification at 5 ("Reply").) Contrary to Plaintiff's argument, Defendant has pointed to facts that are consistent with a defense of claim preclusion, without engaging in any discovery in this case. Moreover, whether Defendant will ultimately prevail on its preclusion defense is not at issue at this juncture. What is at issue is Kim Group's ability to vig-

orously prosecute this action on behalf of the class while responding to defenses that do not apply to the broader class. At the class certification stage defendants do not bear the burden of producing facts that establish their unique defenses; it is enough to show that the named plaintiff is "likely to be preoccupied" with litigating the defense. *Cholakyan*, 281 F.R.D. at 537. The burden of persuading the Court that the defenses will not preoccupy the class representatives to the detriment of the class falls squarely on Plaintiffs, and they have offered nothing more than conclusory statements to rebut Defendant's claims of unique defenses.

In certifying a class, the Court must satisfy itself after a "rigorous analysis" that the party seeking class certification satisfies all of Rule 23(a)'s requirements. *Wal-Mart Stores*, 131 S. Ct. At 2551-52. The Kim Group has failed to persuade the Court that unique defenses would not be a major focus of the litigation if it was a class representative.

ii. Plaintiffs Have Failed to Establish Adequacy of Representation

In order to satisfy Rule 23(a)'s adequacy requirement, named plaintiffs and their counsel must not have conflicts of interest with other class members and must be able to prosecute the action vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. The class representative must satisfy the adequacy requirement because unnamed parties to the litigation will be bound by any judgment, and due process is served only if the class representative is capable of protecting the absent class members' interests. *Crawford v. Honig*, 37 F.3d 485, 487 (9th

Cir. 1994). The plaintiff bears "the burden of showing facts that support a finding of adequacy." *Kamar v. Radio Shack Corp.*, 254 F.R.D. 387, 397 (C.D. Cal. 2008). "Class representatives, and not lawyers, must direct and control the litigation." *Berger v. Compaq Computer Corp.*, 257 F.3d 475, 481 (5th Cir. 2001). *See also* S. Rep. No. 104-98 at *6 (1995) (in proposing PSLRA, Congress sought "to empower investors so that they, not their lawyers, control securities litigation.").

This Court harbors concerns about the adequacy of Kim Group and its counsel, the Rosen Law Firm. Plaintiff has not shown that Kim Group is willing to vigorously prosecute this action, and there are troubling, unanswered questions about the extent to which the Rosen Law Firm, rather than its clients, is directing this action. The Court also has concerns about whether the Rosen Law Firm is capable of adequately representing the interests of absent class members.

To satisfy the adequacy requirement, Kim Group must be willing and able to prosecute this action vigorously on behalf of the class. *See Hanlon*, 150 F.3d at 1020. The only evidence bearing on Kim Group's willingness to even participate in this action is the lead plaintiff certifications signed in connection with *Dean*. It is unclear—and Kim Group does not say—how the certifications its members signed twenty-nine months ago in connection with a different case affirmatively demonstrate a present willingness and ability to vigorously litigate this action. (Opposition at 19; *see also* Decl. of Brian D. Long in Supp. of Mot. of Kim Group to Appoint Lead Pl., Ex. 2, *Smyth v.*

Yu Chang, et al., No. 1:12-cv-01262-RGA (D. Del. Dec. 7, 2012)). In response to this concern, Plaintiff purported to attach new declarations to its Reply "evidencing their awareness of this action and awareness of their roles as a representative party." (Reply at 4.) A footnote *in the very same Reply* admits the Rosen Law Firm could not obtain new declarations because the members of the Kim Group were "unavailable." (Reply at 4, n.4.) This anecdote alone gives the Court reason to wonder just how involved the Kim Group is in the prosecution of this action. The Rosen Law Firm's apparent inability to contact its clients also casts doubt on the firm's adequacy as class counsel.

Other troubling facts raise questions about whether the Rosen Firm can adequately represent the interests of absent class members. Defendant correctly notes that ten months after filing *Smyth* in Delaware, Plaintiffs had served only one defendant: Agritech. (Opposition at 12.) Only after the Court issued two Orders to Show Cause did Plaintiffs belatedly move for leave to serve notice on the nine defendants domiciled abroad by serving notice on their counsel in the United States—a motion this Court denied on August 21, 2013. At best, this shows a lack of engagement on the part of both Kim Group and their counsel.

In sum, Plaintiff's failure to provide evidence that it can fairly and adequately represent the proposed class leads the Court to conclude that Plaintiff has failed to satisfy Rule 23(a)'s adequacy requirement.

B. Motion to Strike

Defendant has asked this Court to strike the class allegations under Rule 12(f). However, neither Plaintiff nor Defendant directly addresses the requirements of Rule 12(f), which governs motions to strike pleadings. Instead, their arguments largely center on the merits of class certification. These two matters require separate inquiries, however, as the Court may not use a Motion to Strike to resolve disputed factual and legal issues. *See Whittlestone*, 618 F.3d at 973. Here, the analysis is limited to whether Defendant has established, as it must in a motion to strike pleadings, that Plaintiff's allegations are insufficient defenses, redundant, immaterial, impertinent, or scandalous. *Id.* at 973-74.

Ignoring the text of Rule 12(f), Defendant instead proposes three alternative theories for striking the class allegations that largely restate their arguments against class certification: (1) the Court should apply principles of comity based on its denial of class certification in *Dean*; (2) Plaintiffs' submission of new market efficiency evidence would not alter the Court's finding in *Dean* that class certification was improper because the class claims did not predominate; and (3), *Taylor v. Sturgell* precludes claims by absent class members who employ "tactical maneuvering" to bring suit on behalf of a party bound by a prior settlement. All of these arguments involve substantial legal or factual issues; therefore, they cannot be resolved by a Rule 12(f) Motion to Strike. *See Whittlestone*, 618 F.3d at 973 (registering concern that deciding issues under Rule 12(f) could insulate trial court's decision from appellate review).

Even if Rule 12(f) were the proper vehicle for addressing Defendant's comity argument, the argument is without merit. The cases Defendant cites suggest that a court may apply principles of comity to strike class allegations when an action is "materially identical" to a prior action and the reasons for denying class certification apply equally to the iterative case. *See, e.g., Baker v. Microsoft Corp.*, 851 F. Supp. 2d 1274, 1279 (W.D. Wash. 2012). Even if this action is materially identical to *Dean*, it is not clear that the reason the Court denied class certification in *Dean* applies equally to this case. In *Dean* the Court held that Plaintiffs had failed to establish that questions of law or fact common to the class predominated over individual questions, as required under Rule 23(b)(3). That holding was based on a finding that one of the Plaintiffs' own experts had failed to demonstrate market efficiency. Plaintiffs in this action have submitted entirely new expert declarations. Given the different factual showings in each case, it would be improper to decide class certification issues based solely on comity. Having denied Plaintiff's Motion for Class Certification on Rule 23(a) grounds, the Court declines to decide whether Plaintiff satisfies the requirements of Rule 23(b). The Court notes, however, that if Rule 23(b) forms an additional barrier to class certification in this case, it is because the evidence Plaintiffs produced is insufficient to meet their burden under Rule 23(b), not because of principles of comity.

In the alternative, Defendant argues that the Court should strike the class allegations under Rule 23(d)(1)(D), on the basis of alleged collusion between Kim Group and the *Dean* plaintiffs. While there is

scant case law addressing when a Rule 23(d)(1)(D) motion is appropriate, what little authority exists suggests that a motion under this rule is premature until a court makes a final determination that class treatment is inappropriate. *See Cholakyan v. Mercedes-Benz USA, LLC*, 796 F. Supp.2d 1220, 1245-46 (C.D. Cal. 2011). For reasons addressed above, the Court declines to strike class allegations at this juncture and Defendant's Motion is removed from the calendar.

C. Motions For Appointment As Lead Plaintiff

Victor van de Reijt Holding BV, a third party, and Plaintiff Kim Group move for appointment as Lead Plaintiff. Because no class has been certified, these motions are premature. Accordingly, they are denied without prejudice.

V. CONCLUSION

For the foregoing reasons, the Court **DENIES** without prejudice Victor van de Reijt Holding BV's Motion for Appointment As Lead Plaintiff and Plaintiff Kim Group's Motion for Appointment As Lead Plaintiff. The Court **DENIES** Plaintiff's Motion for Class Certification and removes Defendant's Motion to Strike Class Allegations from the calendar.

IT IS SO ORDERED.

* * *

APPENDIX H

Denial of Petition for Permission to Appeal in *China Agritech, Inc. v. Dean*

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

THEODORE E. DEAN, individually and on behalf of all others similarly situated; et al., Plaintiffs - Petitioners, v. CHINA AGRITECH, INC.; et al., Defendants - Respondents.	No. 12-80120 D.C. No. 2:11-cv-01331-RGK-PJW Central District of California, Los Angeles ORDER

Before: SCHROEDER and TASHIMA, Circuit Judges.

Petitioners' request for judicial notice is granted.

The court, in its discretion, denies the petition for permission to appeal the district court's May 3, 2012, order denying class action certification. *See* Fed. R. Civ. P. 23(f); *Chamberlan v. Ford Motor Co.*, 402 F.3d 952 (9th Cir. 2005) (per curiam).

APPENDIX I

Class Action Notification Press Releases

Glancy Binkow & Goldberg LLP

Glancy Binkow & Goldberg LLP, Representing Shareholders of China Agritech, Inc., Announces an April 12, 2011 Deadline to Move for Appointment as Lead Plaintiff in the Shareholder Lawsuit – CAGC

March 14, 2011 21:40 ET | **Source**: Glancy Binkow & Goldberg LLP

LOS ANGELES, March 14, 2011 (GLOBE NEWSWIRE) -- Glancy Binkow & Goldberg LLP announces that all persons or entities who purchased or otherwise acquired the securities of China Agritech, Inc. ("China Agritech" or the "Company") (Nasdaq:CAGC) between February 8, 2010 and February 3, 2011, inclusive (the "Class Period"), have 29 days until the April 12, 2011 deadline to move the Court to serve as Lead Plaintiff in the securities fraud class action lawsuit. The case filed by Glancy Binkow & Goldberg LLP, *Pepperdine v. China Agritech, Inc., et al.*, No. CV-11-01441-RGK, has been assigned to the Honorable R. Gary Klausner, United States District Judge for the Central District of California.

A copy of the Complaint is available from the court or from Glancy Binkow & Goldberg LLP. Please contact us by phone to discuss this action or to obtain a copy of the Complaint at (310) 201-9150 or Toll Free at (888) 773-9224, by email to share-

holders@glancylaw.com, or visit our website at http://www.glancylaw.com.

China Agritech, through its subsidiaries, manufactures and sells organic liquid compound fertilizers, organic granular compound fertilizers, and related agricultural products in the People's Republic of China. The Complaint alleges that defendants issued false and/or misleading statements and/or failed to disclose that, among other things: (1) certain of the Company's manufacturing facilities were idle or producing far less fertilizer than the Company portrayed; (2) the Company did not have the equipment to support its claimed production capacity; (3) the Company did not receive a license to manufacture granular compound fertilizer; (4) the Company had misrepresented its fertilizer production levels and sales; and (5), as a result, the Company's statements were materially false and misleading at all relevant times.

On February 3, 2011, analyst firm Citron Research published a report questioning China Agritech's financial statements and claimed production capacity. The report alleged that the Company has misrepresented the scope of its operations and that its financial statements filed with the Securities and Exchange Commission were materially different than the financial statements the Company's subsidiaries had filed with Chinese authorities.

As a result of this news, China Agritech shares declined $0.93 per share, or 8.63%, to close on February 3, 2011, at $9.85 per share, on unusually heavy volume.

The Private Securities Litigation Reform Act of 1995 ("PSLRA") requires the Court to appoint a "Lead Plaintiff" in this case. Any person or group who suffered a loss as a result of purchasing China Agritech securities between February 8, 2010 and February 3, 2011, may ask the Court to be appointed as Lead Plaintiff, but must file a motion no later than the April 12, 2011 deadline.

Glancy Binkow & Goldberg LLP is a law firm with significant experience in prosecuting class actions, substantial expertise in actions involving corporate fraud, and is representing China Agritech shareholders in this litigation.

If you wish to discuss this action or have any questions concerning this Notice or your rights or interests with respect to these matters, please contact Michael Goldberg, Esquire, of Glancy Binkow & Goldberg LLP, 1801 Avenue of the Stars, Suite 311, Los Angeles, California 90067, by telephone at (310) 201-9150, Toll Free at (888) 773-9224, by e-mail to shareholders@glancylaw.com, or visit our website at http://www.glancylaw.com.

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* * *

Rosen Law Firm Representing China Agritech, Inc. Shareholders in Securities Fraud Class Action –CAGC

NEW YORK, March 25, 2011 (GLOBE NEWSWIRE) -- The Rosen Law Firm, P.A. is representing China Agritech shareholders in a securities fraud class action. If you purchased the common stock of China Agritech, Inc. ("China Agritech" or the "Company") (Nasdaq:CAGC) during the period from February 8, 2010 through February 3, 2011 (the "Class Period"), you should contact the Rosen Law Firm for more information about the importance of serving as a lead plaintiff. The lawsuit seeks to recover damages for investors from violations of federal securities laws

To join the China Agritech class action, visit the Rosen Law Firm's website at http://www.rosenlegal.com , or call Laurence Rosen, Esq. or Phillip Kim, Esq., toll-free, at 866-767-3653; you may also email lrosen@rosenlegal.com or pkim@rosenlegal.com for information on the class action.

The Complaint alleges China Agritech issued materially false and misleading financial statements. Particularly, the Complaint alleges that on or about February 3, 2011, analyst firm LM Research issued a report (the "Report") alleging, among other things, that the Company's statement of revenue and earnings for the fiscal year 2009 are materially false and misleading. The Report, citing sources, claims that China Agritech's U.S. financial statements were materially different than the financial statements filed with Chinese authorities by a number of the Compa-

ny's subsidiaries. The report claims that the revenue reported in the Company's SEC filings for 2009 is ten times larger than what the Chinese regulatory reports show. The LM Research report also noted a number of potential badges of fraud within the Company. The Complaint alleges that when these disclosures of potential fraud concerning China Agritech were revealed to the market, the price of China Agritech stock dropped, damaging investors.

If you wish to join the class action as serve as lead plaintiff, you must move the Court no later than April 12, 2011. A lead plaintiff is a representative party acting on behalf of other class members in directing the litigation. For more information or to discuss your rights or interests regarding this class action, please contact Laurence Rosen, Esq. or Phillip Kim, Esq. of The Rosen Law Firm, toll-free, at 866-767-3653, or via e-mail at lrosen@rosenlegal.com or pkim@rosenlegal.com. You may also visit the firm's website at http://www.rosenlegal.com

No class has yet been certified in the above action. Until a class is certified, you are not represented by counsel unless you retain one. You may choose to do nothing at this point and remain an absent class member.

The Rosen Law Firm represents investors throughout the globe, concentrating its practice in securities class actions and shareholder derivative litigation.

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* * *

The Rosen Law Firm Files Securities Class Action Charging China Agritech, Inc. with Securities Fraud — CAGC

February 11, 2011 10:24 PM Eastern Standard Time

NEW YORK--(BUSINESS WIRE)--The Rosen Law Firm, P.A. today announced that it has filed a class action lawsuit on behalf of investors who purchased the common stock of China Agritech, Inc. ("China Agritech" or the "Company") (NASDAQ: CAGC) during the period from February 8, 2010 through February 3, 2011 (the "Class Period"). The lawsuit seeks to recover damages for investors from violations of the federal securities laws.

To join the China Agritech class action, visit the Rosen Law Firm's website at http://www.rosenlegal.com, or call Laurence Rosen, Esq. or Phillip Kim, Esq., toll-free, at 866-767¬3653; you may also email lrosen@rosenlegal.com or pkim@rosenlegal.com for information on the class action. The case is pending in the U.S. District Court for the Central District of California.

NO CLASS HAS YET BEEN CERTIFIED IN THE ABOVE ACTION. UNTIL A CLASS IS CERTIFIED, YOU ARE NOT REPRESENTED BY COUNSEL UNLESS YOU RETAIN ONE. YOU MAY CHOOSE TO DO NOTHING AT THIS POINT AND REMAIN AN ABSENT CLASS MEMBER.

The Complaint alleges China Agritech issued materially false and misleading financial statements. Particularly, the Complaint alleges that on or about February 3, 2011, analyst firm LM Research issued

a report (the "Report") alleging, among other things, that the Company's statement of revenue and earnings for the fiscal year 2009 are materially false and misleading. The Report, citing sources, claims that China Agritech's U.S. financial statements were materially different than the financial statements filed with Chinese authorities by a number of the Company's subsidiaries. The report claims that the revenue reported in the Company's SEC filings for 2009 is ten times larger than what the Chinese regulatory reports show. The LM Research report also noted a number of potential badges of fraud within the Company. The Complaint alleges that when these disclosures of potential fraud concerning China Agritech were revealed to the market, the price of China Agritech stock dropped, damaging investors.

If you wish to join the class action as serve as lead plaintiff, you must move the Court no later than April 12, 2011. A lead plaintiff is a representative party acting on behalf of other class members in directing the litigation. For more information or to discuss your rights or interests regarding this class action, please contact Laurence Rosen, Esq. or Phillip Kim, Esq. of The Rosen Law Firm, toll-free, at 866-767-3653, or via e-mail at lrosen@rosenlegal.com or pkim@rosenlegal.com. You may also visit the firm's website at http://www.rosenlegal.com.

The Rosen Law Firm represents investors throughout the globe, concentrating its practice in securities class actions and shareholder derivative litigation.

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* * *

Rosen Law Firm – Representing China Agritech, Inc. Shareholders – Reminds Investors of Important April 12, 2011 Deadline in Class Action – CAGC

February 18, 2011 19:38 ET | **Source**: The Rosen Law Firm PA PC

NEW YORK, Feb. 18, 2011 (GLOBE NEWSWIRE) -- The Rosen Law Firm, P.A. reminds investors of the important April 12, 2011 lead plaintiff deadline. If you purchased the common stock of China Agritech, Inc. ("China Agritech" or the "Company") (Nasdaq:CAGC) during the period from February 8, 2010 through February 3, 2011 (the "Class Period"), you should contact the Rosen Law Firm for more information about the importance of serving as a lead plaintiff. The lawsuit firm by the firm is seeking to recover damages for investors from violations of federal securities laws No class has yet been certified in the above action. Until a class is certified, you are not represented by counsel unless you retain one. You may choose to do nothing at this point and remain an absent class member.

To join the China Agritech class action, visit the Rosen Law Firm's website at http://www.rosenlegal.com, or call Laurence Rosen, Esq. or Phillip Kim, Esq., toll-free, at 866-767-3653; you may also email lrosen@rosenlegal.com or pkim@rosenlegal.com for information on the class action. The case is pending in the U.S. District Court for the Central District of California.

The Complaint alleges China Agritech issued materially false and misleading financial statements. Particularly, the Complaint alleges that on or about

February 3, 2011, analyst firm LM Research issued a report (the "Report") alleging, among other things, that the Company's statement of revenue and earnings for the fiscal year 2009 are materially false and misleading. The Report, citing sources, claims that China Agritech's U.S. financial statements were materially different than the financial statements filed with Chinese authorities by a number of the Company's subsidiaries. The report claims that the revenue reported in the Company's SEC filings for 2009 is ten times larger than what the Chinese regulatory reports show. The LM Research report also noted a number of potential badges of fraud within the Company. The Complaint alleges that when these disclosures of potential fraud concerning China Agritech were revealed to the market, the price of China Agritech stock dropped, damaging investors.

If you wish to join the class action as serve as lead plaintiff, you must move the Court no later than April 12, 2011. A lead plaintiff is a representative party acting on behalf of other class members in directing the litigation. For more information or to discuss your rights or interests regarding this class action, please contact Laurence Rosen, Esq. or Phillip Kim, Esq. of The Rosen Law Firm, toll-free, at 866-767-3653, or via e-mail at lrosen@rosenlegal.com or pkim@rosenlegal.com. You may also visit the firm's website at http://www.rosenlegal.com.

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* * *

APPENDIX J

Class Action Notification Press Releases

Investor Notice: The Rosen Law Firm Updates China Agritech Shareholders on Securities Class Action –CAGC

June 29, 2012 19:05 ET | **Source**: The Rosen Law Firm PA PC

NEW YORK, June 29, 2012 (GLOBE NEWSWIRE) -- The Rosen Law Firm, P.A. announces an update on the securities class action filed on behalf of purchasers of China Agritech common stock and call options (Nasdaq:CAGC). The Rosen Law Firm is lead counsel in the shareholder lawsuit *Dean v. China Agritech, Inc.*, 11-CV-1331 pending in federal court in Los Angeles (the "Action").

First, the Court upheld the complaint against the defendants' motions to dismiss in the Action. The Court held that the plaintiffs' complaint successfully alleged that China Agritech had committed securities fraud by overstating its revenues for 2008 and 2009 by 1,444% and 900%, respectively. The Court also held that the complaint successfully alleged that China Agritech had committed securities fraud by failing to disclose that its largest supplier was a related party, as it was 90% owned by China Agritech's CEO. Third, the Court held that the complaint adequately alleged China Agritech's motive to inflate revenue to benefit from his ownership of this related party.

Second, the Court denied the plaintiffs' motion for class certification. As a result, your rights as a

shareholder are no longer protected. You must act yourself to protect your rights. You may protect your rights by joining in the current Action as a plaintiff or by filing your own action against China Agritech. Also because the Court denied the motion for class certification, the statute of limitations is running on any claims you have against China Agritech and its officers and directors.

If you purchased China Agritech stock or options and you wish to join the Action and protect your rights, or if you have any questions regarding your rights or interests with respect to China Agritech stock, please contact Jonathan Horne, Esquire, of The Rosen Law Firm, P.A., by telephone at (212) 686-1060 or Toll Free at (866) 767-3653 or by email at jhorne@rosenlegal.com. For more information about The Rosen Law Firm, P.A., please visit our website at www.rosenlegal.com

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CORRECTING and REPLACING Rigrodsky & Long, P.A. Files Securities Fraud Class Action Lawsuit Against China Agritech, Inc.

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CORRECTION...by Rigrodsky & Long, P.A.

WILMINGTON, Del.--(BUSINESS WIRE)--Seventh graph, first sentence of release should read: If you wish to serve as lead plaintiff, you must move the Court no later than December 7, 2012. (sted If you wish to serve as lead plaintiff, you must move the Court no later than December 4, 2012.)

> "E&Y [to] orally advise[] the Audit Committee that it may not be able to rely on management's representations based on the issues identified."

The corrected release reads:

RIGRODSKY & LONG, P.A. FILES SECURITIES FRAUD CLASS ACTION LAWSUIT AGAINST CHINA AGRITECH, INC.

Rigrodsky & Long, P.A. announces that it has filed a class action lawsuit in the United States District Court for the District of Delaware on behalf of all persons or entities that purchased the securities of China Agritech, Inc. ("China Agritech" or the "Company") (OTC Pink: CAGC) between November 12, 2009 and March 11, 2011 (the "Class Period"), alleging violations of the Securities Exchange Act of 1934 against certain of the Company's officers (the "Complaint"). The case is entitled *Smyth v. Chang*, Case No. 12-cv-1262 (D. Del.).

If you purchased shares of China Agritech during the Class Period, and wish to discuss this action or have any questions concerning this notice or your rights or interests, please contact Peter Allocco of Rigrodsky & Long, P.A., 825 East Gate Boulevard, Suite 300, Garden City, NY at (888) 969-4242, by e-mail to info@rigrodskylong.com, or at: http://www.rigrodskylong.com/news/china-agritech-inc-cagc.

The Complaint alleges that throughout the Class Period, defendants made materially false and misleading statements regarding the Company's business operations, financial condition and prospects. Specifically, the Complaint alleges that the Company overstated its revenues and omitted to disclose significant related-party transactions. On November 12, 2009, the Company filed a Form 10-Q with the U.S. Securities and Exchange Commission ("SEC") reporting its third quarter results. The 10-Q was false because it materially misstated the Company's revenue and net income for the quarter. The Company's Form 10-K, filed with the SEC on April 1, 2010, contained similar misstatements about the Company's revenue and net income, in addition to concealing related-party transactions involving China Agritech's Chief Executive Officer ("CEO"), Yu Chang ("Chang"). The 10-K indicated that the Company purchased 15% and 12% of its raw materials from Shenzhen Hongchou Technology Company Ltd. ("Shenzehn Hongchou") in fiscal 2009 and 2008, respectively. However, it failed to disclose that during that time, Defendant Chang owned 90% of Shenzhen Hongchou. Generally Accepted Accounting Principles, State of Financial Accounting Standards

and SEC regulations all require the Company to disclose all material related-party transactions, which it failed to do.

However, the truth started to reveal itself regarding the accuracy of China Agritech's financial statements. On February 3, 2011, the research firm LM Research published a report asserting that China Agritech was engaged in fraud. The report concluded that the Company's financial statements were fraudulent, its purported revenue was overstated and that its plants were idle. As a result of the LM Research report, shares in China Agritech declined from a close of $10.78 on February 2, 2011 to $9.85 on February 3, 2011, on unusually high volume of over 2.6 million shares. Then, on February 15, 2011, Bronte Capital issued a scathing report presenting additional facts indicating that China Agritech was engaged in fraud and could not possibly have produced the revenue it claimed in its financial statements. As a result of the Bronte Capital report, shares in China Agritech declined from a close of $9.21 on February 15, 2011 to $7.44 on February 16, 2011, again on unusually high volume of over 2.8 million shares.

On March 13, 2011, China Agritech announced the formation of a Special Committee of its Board of Directors to investigate the allegations of fraud that the Company maintained had been made by third parties. The next day, China Agritech announced in a Form 8-K filed with the SEC that Ernst & Young Hua Ming ("E&Y") had been dismissed as the Company's independent auditor. In explaining its reasons for the dismissal, the Company revealed that it had, in essence, concealed that E&Y had identified

serious problems with its financial statements as early as December 15, 2010 and had informed the Company's board that an internal investigation was necessary. Yet, the Company failed to correct the problems with the financial statements and failed to provide verification for certain transactions – prompting "E&Y [to] orally advise[] the Audit Committee that it may not be able to rely on management's representations based on the issues identified."

Additionally, on March 14, 2011, the NASDAQ halted trading in China Agritech stock with its share price at $6.88 per share and initiated delisting proceedings. On May 20, 2011, after being delisted by the NASDAQ, China Agritech shares opened for trading on the pink sheets. That day, shares in China Agritech closed at $3.80 per share, a decline of $3.08 per share, or almost 45%.

If you wish to serve as lead plaintiff, you must move the Court no later than December 7, 2012. A lead plaintiff is a representative party acting on behalf of other class members in directing the litigation. In order to be appointed lead plaintiff, the Court must determine that the class member's claim is typical of the claims of other class members, and that the class member will adequately represent the class.

Your ability to share in any recovery is not, however, affected by the decision whether or not to serve as a lead plaintiff. Any member of the proposed class may move the court to serve as lead plaintiff through counsel of their choice, or may choose to do nothing and remain an absent class member.

Rigrodsky & Long, P.A., with offices in Wilmington, Delaware and Garden City, New York, regularly litigates securities class, derivative and direct actions, shareholder rights litigation and corporate governance litigation, including claims for breach of fiduciary duty and proxy violations in the Delaware Court of Chancery and in state and federal courts throughout the United States.

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